UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/75
30 January 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (c) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 2001/47

GE.02-10396 (E) 040302

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Executive summary

This report is the ninth submitted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain (India), whose mandate was established by the Commission on Human Rights in its resolution 1993/45. The report is submitted pursuant to Commission resolution 2001/47. The report describes the activities undertaken by the Special Rapporteur and contains a discussion of issues particularly relevant for the past year. A brief summary of urgent appeals and communications to and from Governments is contained in addendum 2 to the present report, while a report of the Special Rapporteur's mission to Argentina is contained in addendum 1.

With regard to the situation in countries, during the period under review (15 December 2000-14 December 2001), the Special Rapporteur sent 124 urgent actions and 37 letters of allegation to 69 countries (27 to African countries, 22 to Asian countries, 5 to Eastern European countries, 2 to Western European and other countries and 13 to Latin American and Caribbean countries) on behalf of 1,133 individuals, including 34 women and 20 minors. Further to his communications, he received 45 replies (from 13 African, 17 Asian, 3 Eastern European, 5 Western European and other and 7 Latin American and Caribbean Governments). The Special Rapporteur was not able to deal with all of the some 1,900 communications he received owing to the lack of resources devoted to his mandate. However, the establishment in June 2001 within the Thematic Mechanisms Team of the Quick Response Desk and the database have greatly assisted him in the discharge of his mandate by enabling him to respond more quickly to urgent cases.

It is significant to note that 77 urgent appeals and 15 letters of allegations addressed to Governments by the Special Rapporteur last year were sent jointly with four country Special Rapporteurs (Democratic Republic of the Congo, Islamic Republic of Iran, Sudan, Equatorial Guinea) and six thematic mechanisms (Special Rapporteur on torture, Special Rapporteur on extrajudicial, summary or arbitrary executions, Chairman of the Working Group on Arbitrary Detention, Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on violence against women, Special Representative of the Secretary-General for human rights defenders).

As part of his activities, the Special Rapporteur also issued two press releases and joined in three declarations including the one issued by 17 experts of the Commission on Human Rights on the occasion of United Nations Human Rights Day. Furthermore, he sent a note verbale to all Member States drawing their attention to paragraph 13 of Commission on Human Rights resolution 2001/47 which invites States to "submit to the Special Rapporteur comments on their programmes and policies with respect to access to information for the purposes of education on and prevention of HIV". He received information from 16 countries and awaits additional responses to undertake an in-depth analysis of this important issue.

Country visits are also another essential aspect of the Special Rapporteur's mandate. From 25 June to 2 July 2001, he undertook a mission to Argentina (his first mission to Latin America since his appointment as Special Rapporteur). A visit to Sri Lanka from 27 November to 2 December 2001 was planned but owing to political developments it was postponed and will take place in the course of 2002. During the period under review, the

Special Rapporteur received invitations to undertake a visit from the Governments of Egypt, Colombia, Guatemala, Indonesia and Equatorial Guinea. He hopes to visit some of these countries in the course of 2002. The Special Rapporteur regrets, however, that no reply has been received so far to his request to visit: Angola, China, Cuba, the Democratic People's Republic of Korea, India, Pakistan, the Russian Federation and Viet Nam. This year, the Special Rapporteur sent a request to visit Ethiopia, Eritrea and Zimbabwe.

During the year under review, the Special Rapporteur has pursued cooperation with treaty bodies, United Nations agencies, and intergovernmental and non-governmental organizations. Moreover, his close cooperation with the United Nations Educational, Scientific and Cultural Organization has continued and increased collaboration was obtained from the Special Rapporteur on freedom of expression of the Organization of American States and the Representative on freedom of the media of the Organization for Security and Cooperation in Europe.

In the discharge of his mandate, the Special Rapporteur has also been invited to attend a number of conferences and meetings. In the context of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which he attended, he attended the Asian Preparatory Meeting for the World Conference in Teheran (19-21 February 2001) and the second session of the Preparatory Committee in Geneva (28 May-2 June 2001). Moreover, he made a keynote address on the occasion of the celebration in Windhoek of World Press Freedom Day (3 May 2001). He also made a statement at the International Conference on the Right to Information organized by Article 19, the Global Campaign for Free Expression (Colombo, 29-31 July 2001). He also attended the third meeting which brought together the OSCE Representative on freedom of the media and the OAS Special Rapporteur on freedom of expression organized in London by Article 19. Finally, he delivered a statement at the International Consultative Conference on School Education in relation with Freedom of Opinion and Belief, Tolerance and Non-Discrimination in Madrid (23-25 November 2001).

As in previous years, on the basis of the communications received, the report identifies "trends" that may encourage Governments to review practices and take remedial action when required. For the first time since he took up his function as Special Rapporteur, detailed statistics have been included in his annual report to the Commission on Human Rights. In the present report, the Special Rapporteur also directs the attention of Governments to a number of issues such as the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the events of 11 September 2001, broadcasting and the Internet.

The Special Rapporteur concludes the report with his recommendations. As the right to freedom of opinion and expression is violated regularly in States with widely different political and institutional frameworks, he urges Governments to scrutinize their domestic legal systems to bring them into line with international standards. The Special Rapporteur also encourages Governments to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to amend criminal laws which may be used to infringe article 19 of the Universal Declaration of Human Rights, and to ensure that press offences are no longer punishable by imprisonment. With regard to the events of 11 September, the Special Rapporteur, who condemns them in the strongest terms, urges all Governments to refrain from targeting groups such as religious and ethnic minorities, political

activists and the media and not to respond to terror by adopting laws which have a negative impact for the realization of human rights, in particular the right to freedom of opinion and expression as stated in article 19 of the Universal Declaration of Human Rights.

Additionally, the Special Rapporteur considers that the free flow of information and ideas is one of the most powerful ways of combating racism, discrimination, xenophobia and intolerance. He recommends as a follow-up to the World Conference that the working relationship be clearly defined between the Anti-Discrimination Unit of the Office of the High Commissioner for Human Rights and the special procedures. He suggests that the special procedures should be able to make recommendations to the Anti-Discrimination Unit on issues that may deserve specific thought, research and analysis and eventually recommend technical cooperation programs on issues which they have identified as being critical.

As regards the new technologies, the Special Rapporteur recalls that new technologies, and in particular the Internet, are inherently democratic, provide the public and individuals with access to information sources and enable everyone to participate actively in the communication process. In that connection, he encourages States to take positive measures to promote universal access to the Internet and reception of broadcasting. He recommends that no separate rules limiting Internet content be adopted. Moreover, the Special Rapporteur continues to express concern at the high number of cases of violations of the right to freedom of opinion and expression committed by non-State actors and therefore he would like to reiterate his suggestion that the Commission on Human Rights consider how and by what means the international community can give particular and coherent attention to the question of non-State actors and action by them that infringe upon or restrict the rights to freedom of opinion and expression. With regard to exercise by women of their right to freedom of opinion and expression, he urges Governments to take all necessary steps to remove formal and cultural obstacles which hamper their full enjoyment. Finally, the Special Rapporteur repeats his deep concern as regards the imbalance between the requirements set out by the mandate and the inadequate financial and human resources put at his disposal.

Introduction

1. The present report is the ninth report submitted by Mr. Abid Hussain (India), Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. The mandate was established by the Commission on Human Rights in its resolution 1993/45 of 5 March 1993. This report is submitted pursuant to Commission resolution 2001/47. Section I of the report contains the terms of reference for the discharge of his mandate. Section II presents an account of the activities undertaken within the framework of his mandate in the past year. Section III provides a brief discussion on trends. Section IV deals with a number of issues which the Special Rapporteur considers to be important for the development of the right to freedom of opinion and expression. Lastly, section V contains the conclusions and recommendations of the Special Rapporteur.

I. TERMS OF REFERENCE

2. The Special Rapporteur refers to his previous reports as regards the mandate and methods of work adopted by him. The structure of the present report is along the same lines as the previous report, except that the summaries of communications with Governments, because of their length, have been put in a separate document (E/CN.4/2002/75/Add.2). They have been presented by geographic region rather than in alphabetical order by country, as in the previous reports. The Special Rapporteur has found that this new methodology has enabled him to provide more detailed information on urgent appeals and communications sent and received. It is significant to note that the Special Rapporteur has, for the first time since his appointment, prepared and included detailed statistics on communications sent and received.[1] This has enabled him to analyse the cases more deeply and highlight the trends.

3. In addition, in the main body of the report, the Special Rapporteur has looked at some issues that he considers to have been particularly relevant during the period under review such as the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the events of 11 September and their impacts on the right to freedom of opinion and expression, broadcasting and the Internet.

II. ACTIVITIES

A. Communications

1. Information received

4. The Special Rapporteur has noted that the number of communications received annually still continue to increase. During the period under review he received some 1,900 communications (1,700 communications were received in 2000). As was the case last year, the communications brought to the attention of the Special Rapporteur were from a variety of sources: international, regional, national and local non-governmental organizations; associations of media professionals; trade unions; members of political parties. The Special Rapporteur would like to thank all of them for the information and documentation provided which are essential to the discharge of his mandate.

2. Communications sent to and received from Governments

5. During the period under review, the Special Rapporteur sent 37 allegations and 124 urgent actions (see annex I). In 2000, the Special Rapporteur sent 16 letters of allegations and 101 urgent appeals. During the period under review (15 December 2000-14 December 2001), the Special Rapporteur sent 124 urgent actions and 37 letters of allegation to 69 countries (27 to African countries, 22 to Asian countries, 5 to Eastern European countries, 2 to Western European and other countries and 13 to Latin American and Caribbean countries) on behalf of 1,333 individuals, including 34 women and 20 minors. Further to his communications he received 45 replies (from 13 African, 17 Asian, 3 Eastern European, 5 Western European and other and 7 Latin American and Caribbean Governments). Seeking to avoid unnecessary duplication of the activities of the other thematic and country Rapporteurs, the Special Rapporteur has increased the number of joint communications during the past year (see annex II). Detailed statistics concerning all communications are found in annex III.

(a) Urgent actions

6. The Special Rapporteur transmitted 124 urgent actions to a total of 61 Governments. Out of this number, 77 were sent jointly with other thematic mandates (14 with the Special Rapporteur on extrajudicial, summary or arbitrary executions; 3 with the Special Rapporteur on the independence of judges and lawyers; 33 with the Special Rapporteur on torture; 15 with the Special Representative for human rights defenders; 1 with the Special Rapporteur on violence against women; 23 with the Chairman-Rapporteur of the Working Group on Arbitrary Detention).

7. The Special Rapporteur also sent urgent appeals with the following geographic mandates: the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo (4); the Special Rapporteur on the situation of human rights in Equatorial Guinea (1); the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (2); the Special Rapporteur on the situation of human rights in the Sudan (6). He received 38 replies (10 from Africa, 16 from Asia, 2 from Eastern Europe, 5 from Western European and other countries, 5 from Latin America and the Caribbean).

(b) Letters of allegations

8. In addition to the urgent appeals, the Special Rapporteur sent 37 letters of allegations to a total of 30 Governments. Out of this number, 15 were sent with other thematic mandates (2 with the Special Rapporteur on extrajudicial, summary or arbitrary executions; 1 with the Special Rapporteur on the independence of judges and lawyers; 12 with the Special Rapporteur on torture; 2 with the Special Representative on human rights defenders; 3 with the Special Rapporteur on violence against women).[2] The Special Rapporteur received 7 replies (3 from Africa, 1 from Asia, 1 from Eastern Europe, 2 from Latin America and the Caribbean).

(c) Press Releases

9. The Special Rapporteur in addition to the press release issued on the occasion of his visit to Argentina, issued two press releases during the period under review, including one with the Special Rapporteur on extrajudicial, summary or arbitrary executions.[3]

10. The Special Rapporteur has also joined with 16 other independent experts of the Commission on Human Rights in a statement on the occasion of United Nations Human Rights Day (10 December 2001). In this statement, the experts "strongly remind States of their obligations under international law to uphold human rights and fundamental freedoms in the context of the aftermath of the tragic events of 11 September 2001" (annex IV).

11. Finally, he made two joint declarations with the Representative on freedom of the media of the Organization for Security and Cooperation in Europe (OSCE) and the Special Rapporteur on freedom of expression of the Organization of American States (OAS) respectively on racism and the media (27 February 2001) and on challenges to freedom of expression in the new century (21 November 2001).[4]

(d) Support received from the Secretariat in the discharge of his mandate

12. As was the case in previous years, the Special Rapporteur was only able to deal with a limited number of requests for information from Governments, owing to the insufficient financial and human resources available. The matters raised in previous reports to the Commission on Human Rights regarding the circumstances of work (E/CN.4/1995/32, paras. 92-95; E/CN.4/1996/39, para. 6; E/CN.4/1997/31, para. 7; E/CN.4/1998/40, para. 3; E/CN.4/1999/64, para. 3; E/CN.4/2000/63, para. 4; E/CN.4/2001/64, para. 5) unfortunately remain of great concern. The mandate continues to require a substantially increased pool of resources. Within the current constraints, the Special Rapporteur has engaged in an exchange of views with Governments only with regard to a limited number of cases, which are discussed in addendum 2.

13. Against this background, the Special Rapporteur would like nevertheless to welcome the establishment within the Thematic Mechanisms Team of a Quick Response Desk in June 2001 pursuant to the recommendations of two independent experts[5] assessing the efficiency of the special procedures in order to strengthen the urgent appeals mechanism and to alleviate the considerable workload of the assistants to special rapporteurs who draft communications. The Special Rapporteur considers that the establishment of the Quick Response Desk has considerably improved his capacity to deal with a greater number of cases submitted to him and to act more quickly. This new structure has also permitted strengthened cooperation between thematic and geographic mechanisms of the Commission on Human Rights. Furthermore, the Special Rapporteur is of the view that the thematic database which is now operational for several thematic rapporteurs, including for his mandate, is a positive step.

3. Requests for information

14. On 7 June 2001 the Special Rapporteur sent a note verbale to all Member States drawing their attention to paragraph 13 of Commission resolution 2001/47 which invites States "to submit to the Special Rapporteur comments on their programmes and policies with respect to access to

information for the purposes of education on and prevention of human immunodeficiency virus (HIV) infection", and invites "the Special Rapporteur, within the framework of his mandate, to consider these comments with a view to sharing best practices".

15. The Special Rapporteur wishes to thank the Governments of the following 16 countries which have submitted information: Canada, Cuba, Germany, Guatemala, Guinea, Malaysia, Mauritius, Monaco, Netherlands, New Zealand, Nicaragua, Saint Vincent and the Grenadines, Slovenia, Thailand, Togo, United Kingdom of Great Britain and Northern Ireland.

16. The Special Rapporteur awaits additional responses to undertake an in-depth analysis of this important issue. It should be noted that the Government replies received so far by the Special Rapporteur are available for consultation at the Office of the High Commissioner for Human Rights in Geneva.

B. Country visits

17. In addition to communications with Governments, the Special Rapporteur considers that carrying out country visits is another essential element of his mandate. Country visits enable him to examine in situ the realization of the right to freedom of opinion and expression. He therefore calls upon Governments to cooperate with him in that regard.

1. Visits undertaken during the year

18. From 25 June to 2 July 2001, the Special Rapporteur undertook a mission to Argentina (E/CN.4/2002/75/Add.1). This mission is the first undertaken in Latin America by the Special Rapporteur since he assumed his functions. The Special Rapporteur was supposed to travel to Sri Lanka from 27 November to 5 December 2001. However, in light of the elections on 5 December 2001, he decided, after consultations with the Government of Sri Lanka, to postpone his mission. This mission will take place in the course of 2002.

2. Invitations received

19. During the period under review, the Special Rapporteur received invitations to visit Sri Lanka, Colombia, Egypt, Indonesia, Equatorial Guinea and Guatemala. He would like to thank those Governments for their cooperation.

3. Pending and new requests

20. This year, the Special Rapporteur has pursued his efforts to obtain invitations to visit the following countries, to which he had sent in the past requests for invitations: China (June 1999), Cuba (September 1998), Angola (November 2000), the Democratic People's of Korea (March 1996), Viet Nam (March 1996), India and Pakistan (October 2000). The Special Rapporteur regrets that invitations have not so far been received from those countries.

21. The Special Rapporteur has sent also requests to visit Ethiopia, Eritrea and Zimbabwe.

4. Planned visits

22. In 2002, the Special Rapporteur intends to visit the following countries: Egypt, Sri Lanka, Guatemala, Peru, Colombia (dates to be mutually agreed) and Indonesia (dates to be mutually agreed).

C. Cooperation and participation in seminars and conferences

23. The Special Rapporteur continued during the period under review to cooperate closely with treaty bodies and OHCHR human rights field operations, the human rights sections of the Department of Political Affairs and the Department of Peacekeeping Operations, as well as other specialized bodies within the United Nations system, and regional intergovernmental and non-governmental organizations, particularly at the local level, concerned with the right to freedom of opinion and expression.

24. The Special Rapporteur considers that his collaboration with the OSCE Representative on freedom of the media and the OAS Special Rapporteur on freedom of expression to be vital to ensure a coherent global strategy on freedom of expression. In the context of this cooperation, the Special Rapporteur reiterates that the participation of these two other mechanisms in the annual session of the Commission on Human Rights is of particular importance. The Special Rapporteur would like to pay tribute to the work undertaken by Mr. Cantón as OAS Special Rapporteur on freedom of expression and the cooperation extended by his Office during his tenure. The Special Rapporteur wishes him success in his new functions as Secretary of the Inter-American Commission on Human Rights and hopes that the cooperation between the two mandates will continue with his successor.

25. The Special Rapporteur would like to express his great satisfaction that the number of meetings, seminars and conferences he has attended and has been invited to has remained very high. However, owing to his heavy schedule, he regrets that he has not been in a position to accept all the invitations transmitted to him.

1. Seminars and conferences sponsored by the United Nations

26. The Special Rapporteur participated in the Asian Preparatory Meeting for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. (Tehran, 19-21 February 2001).

27. The Special Rapporteur visited Geneva from 2 to 7 April 2001 for consultations and to present his report to the Commission on Human Rights at its fifty-seventh session. During this period the Special Rapporteur met with various delegations (Argentina, Colombia, Egypt, Peru, Sri Lanka and Viet Nam) to discuss his intention to undertake field visits. He also held consultations with NGOs.

28. The Special Rapporteur gave a keynote speech on the occasion of the celebration on 3 May 2001 in Windhoek of World Press Freedom Day organized by the Programme for Freedom of Expression, Democracy and Peace of the United Nations Educational, Scientific and

Cultural Organization. This celebration, which marked the Tenth anniversary of the Windhoek Declaration, was followed by a round-table discussion on the theme "Ten years on: assessment, challenges and prospects".

29. From 28 May to 2 June 2001, the Special Rapporteur attended, in Geneva, the second session of the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

30. The Special Rapporteur attended the eighth meeting of the special rapporteurs/ representatives, independent experts and chairpersons of working groups of the special procedures and advisory services programme of the Commission on Human Rights, held in Geneva from 18 to 22 June 2001. On this occasion, he was designated as Rapporteur of the meeting.

31. The Special Rapporteur along with the Special Rapporteurs on religious intolerance, on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and on the human rights of migrants, attended the World Conference in Durban from 28 August to 7 September 2001. On this occasion, he had the opportunity to meet with delegations as well as representatives of NGOs. He participated in a high level panel on the media and racism.

32. Furthermore, the Special Rapporteur, in his capacity as Rapporteur of the annual meeting of special rapporteurs, presented the report of this meeting (E/CN.4/2002/14) on the occasion of the informal one-day meeting of the Commission on Human Rights held in Geneva on 25 September 2001. This visit was also the occasion for the Special Rapporteur to conduct consultations with several delegations with regard to his mandate.

33. Finally, the Special Rapporteur was invited to attend the International Consultative Conference on School Education in relation with Freedom of Religion and Belief, Tolerance and Non Discrimination (Madrid, 23-25 November 2001). He made a statement to the Conference. The Conference, which was organized by the United Nations and the Government of Spain, was attended by 80 governmental delegations, 6 intergovernmental organizations, 27 NGOs, 20 religious communities, human rights institutes as well as academics and expert obsservers). At the end of the Conference, a declaration was adopted by consensus. The Special Rapporteur would like to praise this very innovative partnership as well as the excellent organization of this conference.

2. Others conferences and seminars

34. The Special Rapporteur travelled to Nepal on 1 and 2 February. On this occasion, he held meetings with representatives of national NGOs working in the field of human rights. He also went to Rabat, Morocco, on 25 and 29 April to attend a meeting of the Royal Academy of the Kingdom of Morocco.

35. From 29 to 31 July 2001, the Special Rapporteur attended in Colombo an international conference on the right to information, focussed on South Asia, organized by Article 19, the Global Campaign for Free Expression, in association with the Center for Policy Alternatives, the Commonwealth Human Rights Initiative and the Human Rights Commission of Pakistan. On that occasion he gave a keynote address.

36. The Special Rapporteur was also invited to several conferences in India. He made a statement at the Universities of Jamia Handard (22 September) and Aligarh (16 and 17 October).

37. A meeting was organized by Article 19, in London on 19 and 20 November 2001 which brought together for the third time the United Nations Special Rapporteur for freedom of opinion and expression; the OSCE Representative on freedom of the media, Freimut Duve, and the OAS Special Rapporteur on freedom of expression, Santiago Canton. The key themes selected this year for in-depth discussion included the Internet, broadcasting, and the consequences of 11 September 2001. As at the two previous meetings, cooperation between the three mandates was also discussed. The agenda also included an opportunity to discuss regional developments in Africa and South-East Asia. A joint declaration was issued at the end of this meeting (see annex V).

III. TRENDS

38. As in previous years, the Special Rapporteur wishes to bring to the attention of the international community a number of policies, practices, incidents and measures with a severe and negative impact on respect for the rights to freedom of opinion and expression and to seek, receive and impart information. A review of communications received in the last year demonstrate clearly that the trends noted in the two previous reports (E/CN.4/2000/63 and E/CN.4/2001/64) have continued. The Special Rapporteur has noted a number of characteristics common to the violations reported to him in the framework of his mandate and believes that it would again be helpful to consider what may be called "trends".

39. During the period under review over 1,900 communications were transmitted to the Special Rapporteur from a variety of sources (international, regional and national non-governmental organizations, associations of media professionals, members of opposition political parties, human rights activists, concerned individuals, etc.). It must be recalled that resource constraints do not permit the Special Rapporteur to respond to, or act upon, every communication he received. These constraints also make it extremely difficult to verify the facts presented in each and every case in order to determine what, if any, action would be appropriate.

40. The Special Rapporteur would like to stress that these communications are not confined to alleged violations in countries in which the political and institutional arrangements are implicitly or explicitly undemocratic even though a large number of allegations continues to refer to the following situations: (a) internal armed conflict; (b) civil unrest; (c) legal and institutional protections and guarantees of human rights are circumscribed to a greater or lesser degree; and (d) legal and institutional protections/guarantees exist but are not properly implemented. Nonetheless, it is important to note that allegations refer also to incidents and instances in which the rights to freedom of opinion and expression, information, association and assembly are infringed or violated in both emerging democracies and countries with

long-established democratic institutions, practices and traditions. Based on information received, the Special Rapporteur concludes that violations of the rights to seek, receive and impart information as well as the rights to assembly and association are rampant and may occur anywhere in the world.

41. A majority of cases received by the Special Rapporteur have continued to relate to violations and actions taken against media professionals. Similar actions and violations of rights also occur, however, in relation to political groups and members of opposition political parties, human rights activists, lawyers, students, academics, trade unionists, persons participating in general strikes, women, peasants, members of religious and indigenous minorities, authors, cartoonists and others.

42. As has been the case in the past, in a large number of instances, national security as well as the "argument of necessity" continue to be frequently used by authorities in a number of countries to silence and/or suppress independent media and to take punitive action against journalists, academics, activists, community leaders, religious and indigenous minorities or ordinary citizens who have expressed their legitimate right to freedom of opinion and expression or who have assembled peacefully to express concern or opposition to government decisions and actions.

43. From the communications received it appears that the individuals seeking to exercise freedom of opinion and expression have frequently being accused of: "denigrating and defaming government officials, military personnel or judicial authorities", "propagating immoral, extremist and divisive ideas", "collecting dissident news", "publishing lies or false and insulting information", "disturbing public order", "criticizing religious and traditional practices" "tarnishing the image of the country ", "putting at risk the unity and best interest of the country", or "spying for foreign nations".

44. The response of the authorities, on the basis of these and other characterizations, have, in the majority of instances, included: bans, closure and seizure of publications; closure of radio and TV stations; severe restrictions on access to the Internet; denial of access to public information or to some parts of the country; seizure of audio equipment used by broadcast media. The communications received in the past year clearly demonstrate that actions and measures taken by the authorities (police, security forces, the judiciary) against persons seeking to exercise their right to freedom of opinion and expression have in the majority of the cases included: (a) physical harm, attacks, threats and harassment; (b) detention and arrest, bringing of charges, trial and sentencing; and (c) administrative and legal measures. In addition to these types of actions by governmental officials or groups affiliated to them, communications received also relate to actions committed by guerrilla and rebel groups or organized criminals or unknown persons or groups against the media and pro-democracy groups.

45. With these points in mind, the Special Rapporteur directs the attention of Governments to the following general trends in terms of violations of the freedom of opinion and expression and related rights and strongly urges them to take all appropriate action, consistent with the standards set out in the International Bill of Human Rights and associated instruments, to eliminate not only the violations themselves but also their causes and negative consequences.

46. The Special Rapporteur hopes that the identification of these trends and the inclusion for the first time in the report of detailed statistics on communications sent and received will encourage Governments to review practices and take remedial action where required. He also believes that this work will assist OHCHR in developing programmes of technical assistance for interested Governments which will accelerate the process of eliminating the causes of violations of freedom of opinion and expression, the right to information and associated rights.

A. Harm to media personnel and others: killings, attacks, threats, harassment

1. Killings

47. The Special Rapporteur notes with great concern the extent to which efforts to exercise peacefully the rights to expression, opinion, information, association and assembly continue to carry the threat of physical harm. The Special Rapporteur is alarmed at the fact that individuals continue to be killed for having sought to express their right to opinion and expression. The excessive use of force by the police and other security services has been consistently addressed by the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the question of torture. From the communications received during the period under review, it is clear in particular that danger is inherent to the profession of journalism. The Special Rapporteur is particularly alarmed by the fact that deliberate killings of journalists have continued unabated in 2001. He would like in that connection to recall that during the period under review 31 journalists were killed, including 8 in Afghanistan, while exercising their duties.

48. The Special Rapporteur is equally deeply concerned by the continuing trend of "censorship by killing". The murder and assassination of leaders of political parties, trade union leaders and community activists, among others, has continued apace. The "censorship by killing" has continued to be used by State agents, private individuals, or members of armed opposition groups to censor persons who have exercised their right to freedom of opinion and expression and expressed dissident points of views.

49. As was often the case in previous years, in most cases the State has failed to undertake an investigation or has allowed the relevant authorities to carry out investigations in name only. In those cases where charges have been brought, very few prosecutions have succeeded.

2. Attacks, threats, harassment

50. Information received by the Special Rapporteur also consistently referred to threats against, harassment of and attacks against persons working in the media or related fields. He is also extremely concerned that acts of physical harm, threats or attacks against individuals exercising their right to freedom of opinion and expression, whether in a professional manner or not, have appeared to continue to increase. Such cases have included: bombings, shootings and summary executions, death threats, torture of journalists to reveal sources of information, beatings of journalists and photographers covering protest marches organized by opposition parties or labour unions, surveillance of media premises by security forces, summoning journalists for "consultations" with members of the military or the judiciary, search of newspapers and radio station premises and labelling of journalists as criminals.

51. The Special Rapporteur has noted that such violations seem to have often occurred following the publication of articles criticizing the Government's policies, accounts of police misconduct, accusations of corruption against government officials, articles critical of the judiciary, reports on human rights situations, articles on the results of public polls against the Government, or broadcasting army repression of demonstrators.

B. Detention or arrest, bringing of charges, trial and sentencing

52. Despite changes in the legal and policy frameworks based on the rule of law and respect for human rights in a number of countries, there continue to be many cases of arrest and detention without charge or without a legitimate legal basis, or following judicial proceedings of doubtful relevance. The Special Rapporteur is deeply concerned at the fact that thousands of individuals, including over 110 journalists, are detained for having exercised their legitimate right to freedom of opinion and expression.

53. The Special Rapporteur has observed that, in the past year, individuals have been arrested and/or detained on charges of: threatening the security of the State; insulting the head of State and government officials; caricaturing the head of Government; putting at risk the unity and best interest of the country; incitement to public unrest; possessing information that could jeopardize the country's stability; publishing anti-patriotic information; reporting on corruption in Government; inciting hatred; collecting dissident news; treason and spying; violating the press law, disclosing and distributing false news, blasphemy; possessing immoral documents; disseminating subversive information over the Internet; publishing immoral and obscene material.

54. It should be noted that, while a majority of cases of arrest and detention involved journalists and other media professionals, communications received by the Special Rapporteur this year also referred to members of political parties, trade unions, religious and indigenous communities and NGOs. These actions often resulted in the peremptory and unlawful seizure of materials such as books, magazines, pamphlets, research, video and audio equipment, computers and other kinds of equipment used by the broadcasting media.

C. Administrative and legal measures and repressive measures in connection with the media

55. While less numerous than communications related to arrests, detentions, physical harm and threats and harassment, information on administrative and/or legal sanctions continued to be transmitted to the Special Rapporteur. These sanctions result in violations and infringements of the rights that are the subject of his mandate. The Special Rapporteur has noted that in a number of cases, the sanctions have a direct, immediate and negative impact on the right to seek, receive and impart information. As such, they are of grave concern to the Special Rapporteur, and in that connection he would like to remind Governments of their duty to take immediate remedial measures and actions to eliminate these sanctions from both law and practice.

56. A significant number of cases brought to the attention of the Special Rapporteur concerned bans, closure or seizure of publications and/or other media for having, for instance: investigated the killing of an opposition leader; aired a political debate critical to the organization of forthcoming elections; published information deemed false and defamatory; published a cartoon of the Head of State and military officials; promoted anti-patriotic feelings; published immoral publications. Legislation and measures introduced after the events of 11 September which have an impact on the right to freedom of opinion and expression are discussed in section IV of the present report.

57. Additionally, it has been noted that pressure has been exerted on media professionals and others through such administrative measures as the denial of licences to private and foreign stations and the denial of entry permits to, or expulsion of, journalists on the grounds that they are distributing false and tendentious information on the country.

58. Finally, cases of criminal penalties have also been reported to the Special Rapporteur. These penalties were imposed on a number of grounds including: libel, responsibility for public disorder and social unrest, blasphemy, defamation and insult, immoral reporting.

IV. ISSUES

A. World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

59. The Special Rapporteur participated actively in the World Conference. He was invited to attend the Asian Regional Preparatory Conference in Teheran, the Preparatory Committee meeting (he was able only to attend the second session) and the Conference itself in Durban. He issued, jointly with the OSCE Representative on freedom of the media, and the OAS Special Rapporteur on freedom of expression, a statement on 27 February 2001 on Racism and the Media (annex VI).

60. Pursuant to Commission on Human Rights resolution 2000/38 (para. 13 (g)), the Special Rapporteur submitted a contribution to the Preparatory Committee and the World Conference (A/CONF.189/PC.2/24). In this report the Special Rapporteur, after recalling the international legal standards which he feels are relevant both to the right to freedom of opinion and expression and the fight against racism and related intolerance, addressed a few key points which he considered of importance in the context of both his mandate and the objectives of the World Conference. He then analysed hate speech as an area of conflict between the right to freedom of expression and the principle of non-discrimination, as well as the issue of Internet.

61. The Special Rapporteur is of the view that the exercise of the right to freedom of opinion and expression, particularly by the media, and the full respect for the right to freedom of information contribute extensively to the fight against racism, discrimination, xenophobia and related intolerance and to the free flow of information, ideas being one of the most powerful ways of combating these phenomena.

1. Hate speech

62. With regard to hate speech, the Special Rapporteur is of the view that the right to freedom of expression should remain unabridged. However, he acknowledges that in some circumstances, and in particular when freedom of speech leads to the incitement of hatred and/or discrimination, this right conflicts with the rights of others.

63. In this connection, the Special Rapporteur recognizes that "hate speech", or the advocacy of national, racial, religious or other hatred, constitutes an area which commands due and proper attention. The Special Rapporteur is aware of, and concerned at, the potential harm, whether psychological or physical, which can result from hate speech, in particular incitement to violence, heightened tensions between groups of different cultural, ethnic, racial and religious identities, and the perpetuation of stereotypes.

64. In light of these concerns, the Special Rapporteur recognizes that hate speech calls for reasonable restrictions which are necessary to prevent incitement to acts of imminent violence, hatred or discrimination on grounds, among others, of race, religion, colour, descent, or ethnic or national origin. As such, and in accordance with the relevant international standards, the Special Rapporteur wishes to condemn any advocacy of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence; such advocacy should be prohibited by law.

65. At the same time, the Special Rapporteur expresses concern about the possibility of such prohibitions being abused, particularly where respect for human rights and the rule of law is weak and hate speech laws have been used in the past against those they were intended to protect.

66. The Special Rapporteur wishes to emphasize that great care must be taken to achieve an appropriate balance between the rights to freedom of opinion and expression and to receive and impart information, and the prohibition on speech and/or activities promoting racist views and inciting violence.

2. The Internet

67. The Special Rapporteur considers the Internet to be an increasingly important human rights education tool which contributes to a broader awareness of international human rights standards, provisions and principles. He is of the view that "the new technologies and, in particular, the Internet are inherently democratic, provide the public and individuals with access to information sources and enable all to participate actively in the communication process" (E/CN.4/1998/40, para. 45).

68. The Special Rapporteur stresses the significant contribution that the use of new technologies such as the Internet can make in the fight against racism. The global reach and relative ease of use of the Internet make it a unique and highly effective tool for the promotion of human rights, enabling an unprecedented audience previously unfamiliar with human rights education to gain access to valuable information. It can be used to disseminate positive

information and materials, research and facts about immigration and minorities which can in turn support action against racism and discrimination, raise awareness, promote understanding and increase tolerance.

69. At the same time, the Special Rapporteur recognizes the legitimacy of concerns about dissemination over the Internet of racist and xenophobic material such as hate speech, which constitutes a contemporary form of racism. He is aware that the features that make the Internet an asset to democracy and the realization of human rights also render it a powerful tool for the spread of hateful messages and propaganda, and that the Internet makes hate speech available to those who would never before have come into contact with it. In other words, he acknowledges that although "racist material represents only a small percentage of the volume of information on the Internet and that racists in cyberspace are comparatively few and far between, the Internet does act as a 'force multiplier, enhancing power and enabling racists' to have influence in excess of their true numbers. The Internet allows racists to cross national boundaries and bypass laws banning hate material by moving sites abroad" (A/CONF.189/PC.1/5).

70. In light of these considerations, the Special Rapporteur condemns the abuse of the Internet by some groups and/or persons to promote racist and hate speech in violation of international law, or the use of the Internet as a platform for any kind of speech which exceeds the threshold of tolerance. However, the Special Rapporteur believes that the dangers posed by such materials on the Internet can be adequately addressed through the judicious application of existing international standards and national laws consistent with international standards governing freedom of opinion and expression and the right to seek, receive and impart information. He considers that on line expression should be guided by international standards and be guaranteed the same protection as is awarded to other forms of expression.

B. The events of 11 September

71. The Special Rapporteur condemns unreservedly the attacks of 11 September on the World Trade Centre and the Pentagon and expresses his deepest sympathy for the victims of those attacks. Such an attack is an assault on the most fundamental of all human rights - the right to life - and should be condemned unequivocally.

72. He notes that the views of those who launched the attack developed in closed societies and communities, without access to full freedom of expression, in an atmosphere of hatred, anger and conspiracy. Guaranteeing fully the right to freedom of expression and to receive and impart information, as guaranteed by article 19 of the Universal Declaration of Human Rights, is a powerful antidote to the apocalyptic nihilism demonstrated by those who committed these attacks. The Special Rapporteur believes that peace and justice can only be secured by building open societies that guarantee freedom of expression and the right to dissent.

73. The events of 11 September were an attack upon human rights and, as such, the Special Rapporteur believes it is particularly important that States consider the human rights implications of any measures they adopt in response. This is true both of measures directed at those who planned and perpetrated the attacks, which should focus on bringing them to justice rather than revenge, and of measures designed to prevent further attacks in the future. Human rights should be at the centre of any attempt to deal with the aftermath of these terrible events.

74. The Special Rapporteur notes that several States have responded to the events of 11 September by adopting laws which have negative implications for certain rights, including freedom of expression. To respond to terror by rolling back human rights which in some cases have taken centuries to establish is to play into the hands of the terrorists and to let fear overcome rights.

75. The attacks of 11 September 2001 and their aftermath have led to both decisions by the relevant authorities in a number of countries and statements and behaviour by ordinary citizens that have seriously challenged the very principles upon which respect for human rights depends.

76. There are several other observations that the Special Rapporteur would like to make in the context of the events of 11 September. First, there has been a disturbing trend, particularly in the coverage by the media in North America, in which the views and opinions of those who dissent or express concerns are aggressively met with contempt. In a number of instances, it has been suggested by both officials and, for example, "talk-radio" commentators, that anyone who questions the measures, laws and policies that are now current is "unpatriotic" and, by their criticisms, are giving aid and comfort to "the enemy". Similarly, there have been a number of instances in which intolerance has been strongly expressed by some in response to what they see as unwarranted sensitivities based on "political correctness". The Special Rapporteur cautions against such intolerance of dissent and alternative views.

77. In addition, the reports of harassment and violence against followers of Islam are of deep concern. The right freely to adopt and manifest one's religion is one of the most basic rights and must be fully respected and protected at all times. The Special Rapporteur commends those authorities who have taken prompt and appropriate action in response to incidents of threat, arson and physical assault. The authorities at the local level and community organizations and activists are to be commended for their efforts aimed at public education and their consistent condemnation of those who would act against others for the simple reason that those others do not look, speak or dress like them.

78. Moreover, the Special Rapporteur is also concerned that some States have sought to restrict the international and national media in the way they report on the conflicts in Afghanistan and elsewhere. It is vital to the legitimacy of the media that they be able to make editorial judgements as to how conflict is reported, whose views are reported and how events are presented. Authorities summoning journalists to "discuss editorial matters" can have a chilling effect on coverage of conflict and even if such pressure is resisted, it can cloud public perceptions about the impartiality of the media. The Special Rapporteur notes with particular concern reports of attempts to inhibit independent coverage of the conflict in Afghanistan by Al Jazeera, a leading independent media outlet in the Middle East, a region otherwise characterized by excessive government control over the media. The Special Rapporteur emphasizes the need for continuing coverage by the media of the situation in Afghanistan and underscores the need to invite more women and youth to participate in their programmes as experts or commentators on all matters, political, economic, social and cultural.

79. Furthermore, the Special Rapporteur also notes with concern the effects of censorship and control over the media within Afghanistan itself, including the denial of women's right to freedom of expression and the restrictions upon any public display of music or television

imposed by the Taliban. He recommends that the United Nations, in its attempts to secure a lasting political settlement in Afghanistan, prioritize the importance of establishing effective guarantees of freedom of expression and of putting in place a regulatory framework for the media in line with international guarantees. Finally, the Special Rapporteur notes the importance in this endeavour of involving the Afghan media community, including those in exile, as well as the many women who are active in the media and public life.

C. Broadcasting

80. The Special Rapporteur wishes to draw to the attention of States the importance of respect for freedom of expression in relation to broadcasting, and to elaborate on a number of points raised in previous reports. He would like to stress that for the vast majority of people in the world, broadcasting, and particularly radio, is the primary source of information and news. It is thus of the greatest importance that this medium is able to operate independently and in the public interest.

81. The Special Rapporteur is of the view that a key way to serve the public interest is by ensuring the availability of the widest possible range of information and ideas through broadcasting. He believes that promoting diversity should be a primary goal of broadcast regulation. He has also noted that in a number of countries, the State still has a monopoly over broadcasting and private broadcasters are either not allowed at all or are restricted to the cable and satellite sectors. The Special Rapporteur considers that such monopolies can no longer be justified and that all States should put in place regulatory frameworks which provide for the licensing of both commercial and community broadcasters, including through terrestrial transmission systems. Indeed, the regulatory framework should seek to promote maximum utilization of the airwaves in the public interest.

82. Moreover, the Special Rapporteur strongly believes that diversity also implies the equal opportunity for all sectors of society to access the airwaves. The Special Rapporteur has noted that in many countries, broadcasting is dominated by men and women journalists are consigned to lower echelons. Steps should be taken to address this serious problem, particularly with respect to public broadcasters which have an obligation to reflect and serve society as a whole. Similarly, minorities have a right to access the airwaves. Public broadcasters should ensure that their programming serves all members of society and broadcasting authorities should take steps to ensure that minority groups have non-discriminatory access to licences.

83. The Special Rapporteur is also of the view that public broadcasters should serve the public, not the Government or the party in power. This implies protection against political and commercial interference, including through the appointment of an independent governing board and respect for editorial independence. It also requires broadcasters to have a clear mandate setting out the various types of programming they should provide, including a comprehensive, balanced news service.

84. Similarly, broadcast regulators, and other public bodies which exercise power over broadcasters, should be protected against political and commercial interference. Licensing processes should be transparent and fair, with clear criteria, published in advance, for deciding between competing applications.

85. The Special Rapporteur believes that broadcasting needs an appropriate economic environment if it is to flourish and provide a diversity of information to the public. This means that licence fees should not be excessive and that other licensing conditions should not be onerous, taking into account the level of commercial development of the sector. Furthermore, he would invite States to take positive measures to promote the spread of appropriate technology and in the area of training. States should also actively promote universal reception of broadcasting. At the same time, effective rules on undue concentration of ownership are needed to prevent domination of this key medium by a small number of players.

86. The Special Rapporteur has noted that although historically States posed the greatest threat to independent and diverse broadcasting, a new threat has emerged in the form of excessive commercialization of this sector. In some cases, owners treat broadcasting enterprises as businesses rather than as communication media, interfering with editorial independence for commercial or political reasons. The Special Rapporteur encourages owners and their professional staff to conclude agreements that guarantee editorial independence and to ensure that commercial considerations do not unduly influence media content. At the same time, elected officials and members of Government who are media owners should refrain from influencing the content of their media outlets. One way of doing this would be for officials to put their media interests under the control of trustees for the duration of their time in office.

87. Finally, the Special Rapporteur considers that another problem of excessive commercialization is the airing of the cheapest programmes to the detriment of quality and diversity. One solution to this problem is to require broadcasters to carry minimum quotas of locally produced material so as to protect local voices from being overwhelmed by programming imported cheaply from abroad. Another solution is to set broadcasters a range of percentages of different types of programmes, such as documentaries, films, news, educational and children's material, and so on. The Special Rapporteur stresses, however, that there is a risk of political interference where these approaches are applied unless the broadcast regulator operates free of political or commercial interference.

D. The Internet

88. The Special Rapporteur wishes to draw the attention of States to the importance of the Internet to the exercise of the right to freedom of expression. The Internet is a key instrument both in terms of receiving information and for the right to disseminate information and ideas, and should be put to use in the pursuit of respect for rights and social justice. The Internet has enormous potential but, unfortunately, that potential is still largely available only to those in more-developed countries.

1. The digital divide

89. The Special Rapporteur notes that the overwhelming majority of Internet users continue to be found in the more-developed societies and that, even within richer societies, there is a considerable "digital divide" between low-income families and the better off. This means that the majority of the world's population cannot harness the power of the Internet as a vehicle for free expression, democratic empowerment, the advancement of human rights and development. This is exacerbated by the increasing reliance of many actors on the Internet, to the detriment of more traditional forms of communication.

90. The Special Rapporteur would stress that there is no single barrier to Internet access. Economic wealth, both of countries and of individuals, is clearly an important factor; poor infrastructure, the high cost of telecommunications and, in some countries, the lack of cheap, reliable electricity hamper Internet access. In addition, there is a need for sufficient training, technical expertise and basic education.

91. Wealth is not the only barrier. The Special Rapporteur has received information that some countries still impose legal and regulatory barriers to access, exacerbating existing barriers. He would like in that connection to recall that in his report to the Commission on Human Rights at its fifty-seventh session (E/CN.4/2001/64), he paid considerable attention to the question of the Internet and expressed his concern about excessive control of access. During the last year, access restrictions in many States have remained in force. In some States, access to the Internet is restricted to the elite while in others, access is controlled through licensing regimes for Internet service providers or even individual users. In some States, access is possible only through Government-controlled "filtered" gateways.

92. The Special Rapporteur would like to express his support for national and international initiatives to extend Internet access, including the Sustainable Network Development programme administered by the United Nations Development Programme. At the same time, there is a need for an internationally coordinated strategy if global access is to be achieved. In this regard, the Special Rapporteur commends recent progress made through the Group of Eight Digital Opportunity Task Force, as well as the newly inaugurated ICT Task Force of the United Nations.

2. Internet regulation

93. The Special Rapporteur is also concerned at continuing reports of excessive Internet content regulation and of on-line surveillance. Whilst there are legitimate concerns about the availability of illegal material on the Internet, including child pornography, neo-Nazi propaganda and hate speech, any restrictions on the Internet must remain within the strict parameters set by article 19 (3) of the International Covenant on Civil and Political Rights. Some States seek to justify stringent regulation on the grounds that it is necessary to preserve the moral fabric and cultural identity of the society. The Special Rapporteur warns that excessively stringent regulation on these grounds betrays a paternalistic attitude and frustrates the Internet's potential to ensure respect in practice for the right to freedom of expression.

94. Furthermore, the Special Rapporteur has noted that since the events of 11 September, many States have adopted measures allowing for increased surveillance of the Internet. The Special Rapporteur is concerned about the negative impact of such measures on the right to freedom of expression and urges States to seek a fair balance in such regulation. The Special Rapporteur notes that encryption and anonymity software has been developed which can provide protection against unwarranted on-line surveillance, and encourages the use and continued development of these tools.

95. Finally, the Special Rapporteur, maintaining once again that the new technologies, in particular the Internet, are inherently democratic, provide the public and individuals with access to information sources and enable all to participate actively in the communication process, once again urges States to avoid adopting separate rules limiting Internet content.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

96. The Special Rapporteur strongly believes that the right to freedom of expression can be described as an essential test right, the enjoyment of which illustrates the degree of enjoyment of all human rights enshrined in the International Bill of Human Rights, and that respect for this right reflects a country's standards of fair play, justice and integrity.

97. While the Special Rapporteur notes with satisfaction a growing tide in favour of human rights, and that almost all Governments seem to be upholding the sanctity of the principle of freedom of opinion and expression, at the same time he is still encountering innumerable cases of grave violations of human rights.

98. Long-standing patterns of harassment and oppression of persons whose views and opinions differ from those of persons holding power persist in a number of countries. In many instances, restrictions on the freedom of opinion and expression limit to a significant extent the possibility of violations becoming known and investigated. In the view of the Special Rapporteur, such trends perpetuate patterns of government corruption and impunity.

99. From the communications received during the period under review, the Special Rapporteur is compelled to conclude that, as in previous years, violations of the right to freedom of expression occur in all parts of the world. In a number of instances, these violations and violations of other human rights concur, including those related to extrajudicial, arbitrary or summary executions, enforced or involuntary disappearances, torture, religious intolerance and arbitrary detention. The rights to freedom of opinion, expression and information are violated in States with widely different political systems and institutional frameworks for governance.

100. The Special Rapporteur condemns the attacks of 11 September in the strongest terms as crimes against humanity. He would like, however, to express his deep concern that measures taken by some States have targeted certain groups, in particular religious and ethnic minorities, political activists and the media. The Special Rapporteur is also concerned that some States have sought to restrict the international and national media in the way they report on the conflict in Afghanistan and elsewhere. He considers that it is vital to the legitimacy of the media that they be able to make editorial judgements as to how the conflict is reported, whose views are reported and how events are presented. Authorities summoning journalists to "discuss editorial matters" can have a chilling effect on coverage of the conflict and even if such pressure is resisted, it can cloud public perceptions about the impartiality of the media.

101. A matter of particular concern to the Special Rapporteur is the threat that human rights concerns, including freedom of expression, have declined in importance on the international agenda. Close international scrutiny of certain States for human rights reasons now seems to have faded and some NGOs have reported that States and intergovernmental organizations are less responsive to their appeals than formerly. While it is of the greatest importance that a strong coalition against terror be maintained, this cannot, in itself, be a reason to sideline human rights.

102. The Special Rapporteur is also concerned at continuing reports of excessive Internet content regulation and of on-line surveillance. He is concerned that in some States, access to the Internet is restricted to the elite while in others, access is controlled through licensing regimes for Internet service providers or even individual users. In some States, access is possible only through Government-controlled "filtered gateways". Any restrictions on the Internet must remain within the strict parameters set by article 19 (3) of the International Covenant on Civil and Political Rights. The Special Rapporteur notes that encryption and anonymity software has been developed which can provide protection against unwarranted on-line surveillance, and encourages the use and continued development of these tools.

103. With regard to the World Conference against Racism, Racial Discrimination Xenophobia and Related Intolerance, the Special Rapporteur considers that the free flow of information and ideas is one of the most powerful ways of combating these evils. There should be free access to information which exposes or otherwise helps to combat racism, whether that information is held by public or private bodies, unless denial of access can be justified as necessary to protect an overriding public interest. In addition, States should ensure that the public has adequate access to reliable information relating to racism, discrimination, xenophobia and intolerance including, where necessary, through the collection and dissemination of such information by public authorities. The Special Rapporteur considers that media organizations, media enterprises and media workers - particularly public service broadcasters - have a moral and social obligation to make a positive contribution to the fight against racism, discrimination, xenophobia and intolerance.

104. Finally, the Special Rapporteur is still very concerned at the continuing silencing of women in many areas.

B. Recommendations

105. While noting that the cooperation of Governments in the discharge of his mandate continued to be satisfactory (e.g. the number of invitations to conduct field visits received this year), the Special Rapporteur would like to encourage all Governments to cooperate with his mandate as set out in Commission resolution 2000/86, in particular with regard to communications addressed to them.

106. Further to the events of 11 September, the Special Rapporteur would like to urge all Governments not to respond to terror by adopting laws which have a negative impact on the realization of human rights, in particular the right to freedom of opinion and expression as stated in article 19 of the Universal Declaration of Human Rights. The Special Rapporteur strongly believes that it is of the utmost importance, after the events of 11 September, that States consider the human rights implications of any measures they adopt in response. He urges that efforts aimed at mutual respect and tolerance be strengthened and that they not be limited in time but continue beyond the exigencies of the moment.

107. He would like to stress that human rights should be at the centre of any attempt to deal with the aftermath of these terrible events. Therefore, he would like to invite all Governments to review laws specifically intended to protect national security and to scrutinize their domestic legal systems with a view to bringing them into line with international standards governing the

right to freedom of opinion and expression. He also encourages all States that have not ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to do so.

108. The Special Rapporteur is particularly concerned about the "argument of necessity". He urges the authorities who most frequently use this argument, in all countries, to make public as much information as possible related to those questioned or detained and to ensure that their rights to full disclosure, to be heard and to respond to any evidence held or presented against them are fully respected.

109. With regard to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, at the time the Special Rapporteur was finalizing the present report the Declaration and Programme of Action of the World Conference were not available. However, the Special Rapporteur would like to offer the following suggestions. It will be useful to define the relationship that will exist between the OHCHR Anti-Discrimination Unit and the special procedures. Particular attention should be paid to the methodology in order to avoid overlap and duplication, in particular with regard to relationships with NGOs in areas such as the presentation of situations and cases of racism. The coordination that could be implemented between the Unit, the special procedures and the Quick Response Desk should be on the agenda of the next annual meeting of the special rapporteurs. Also, the special procedures should be able to make recommendations to the Anti-Discrimination Unit on issues that may deserve specific thought, research and analysis, and eventually recommend technical cooperation programmes on issues which they have identified as being critical. As soon as the Durban Programme of Action is adopted by the General Assembly, the Special Rapporteur intends to compile in a synoptic table the issues raised in Durban which are relevant to his mandate and to include it in his next report to the Commission.

110. The Special Rapporteur would like to recall that new technologies, in particular the Internet, are inherently democratic, provide the public and individuals with access to information sources and enable all to participate actively in the communication process. He remains concerned at information received regarding the efforts of some Governments either to control or shut down access to the Internet. In that connection, he would like to refer to his report to the Commission at its fifty-seventh session (E/CN.4/2001/64). He urges States actively to promote universal access to the Internet and not to adopt separate rules limiting Internet content.

111. Noting that broadcasting, particularly radio, is, for the vast majority of people, the primary source of information and news, the Special Rapporteur considers of the greatest importance that this medium be able to operate independently and in the public interest. Public broadcasters should serve the public, not the Government or the party in power, and should be protected against political and commercial interference, including through the appointment of an independent governing board and respect for editorial independence. Additionally, he would like to recommend that licensing processes should be transparent and fair, with clear criteria, published in advance, for deciding between competing applications. He also recommends that effective measures be adopted to prevent undue concentration of media ownership.

112. Moreover, the Special Rapporteur would like to recommend that States take positive measures to promote the spread of appropriate technology and in the area of training. States should also actively promote universal reception of broadcasting. At the same time, effective rules on undue concentration of ownership are required to prevent domination of this key medium by a small number of players. He also recommends that owners and their professional staff conclude agreements to guarantee editorial independence and ensure that commercial considerations do not unduly influence media content.

113. As allegations transmitted to the Special Rapporteur relating to the abuse of libel and defamation laws continue to be numerous, he would like to recall the recommendation made in an earlier report (E/CN.4/2000/63, para. 205) that Governments should ensure that press offences are no longer punishable by terms of imprisonment, except in cases involving racist or discriminatory comments or calls to violence. Along the same lines, the Special Rapporteur would urge all Governments to ensure that the fines which the media or any organization/individual is sentenced to pay for offences such as "defamation", "libel", "insults" and publication of "false" or "alarmist" information are not out of proportion to the harm suffered by the victims. He would like to reiterate strongly that such fines cannot be used by Governments to limit the right to receive and impart information and ideas.

114. Additionally, the Special Rapporteur is extremely concerned at the high number of cases of violations of the right to freedom of opinion and expression committed by non-State actors, and therefore he would like to reiterate his suggestion that the Commission on Human Rights consider how and by what means the international community can pay particular and coherent attention to the question of non-State actors and action by them that infringes upon or restricts the rights to freedom of opinion and expression.

115. Furthermore the Special Rapporteur urges Governments to take all necessary steps to remove formal and cultural obstacles to the exercise by women of their right to freedom of opinion and expression, including the right to receive information. The Special Rapporteur is of the view that special efforts to gather and analyse information on that specific issue should be made. In this regard, he invites submissions by Governments, international organizations, specialized agencies, NGOs and individuals.

116. The Special Rapporteur would like also, in accordance with Commission resolution 2001/47, to call on Governments to provide him with comments on their programmes and policies with respect to access to information for the purposes of education on and prevention of HIV, in order for him to be able to present his recommendations to the Commission at its next session, with a view to undertaking a comparative study of the different approaches taken in the various regions and countries in this regard.

117. Finally, the Special Rapporteur, regrettably, deems it necessary to repeat his deep concern as regards the imbalance between the requirements set out by the mandate and the inadequate financial and human resources put at his disposal, despite the recent establishment of the Quick Response Desk and a thematic database within the Thematic Mechanisms Team.

Notes

[1] See annexes 1, 2 and 6.

[2] Some letters by the Special Rapporteur were sent with more than one other special mechanism

[3] This press release may be consulted on the OHCHR website: www.unhchr.ch.

[4] See annexes IV and V.

[5] Ms. Mona Rishmawi and Mr. Thomas Hammarberg.

Annex I

General statistics on communications sent to and received from Governments

	Africa	Asia	Eastern Europe	Western Europe and other	Latin America and the Caribbean	Total
No. of countries to which UA and LA were sent	27	22	5	2	13	69
No. of UA sent	50	47	4	7	16	124
No. of joint UA (with thematic and country mechanisms)	28	28	1	5	13	77
No. of LA sent	15	10	5	-	7	37
No. of joint LA (with thematic and country mechanisms)	5	2	4	-	4	15
No. of PR	1	-	-	1	-	2
No. of Government replies	13	17	3	5	7	45

UA - urgent appeals
LA - letters of allegation
PR - press releases

Annex II

Statistics on joint communications

	Letters of allegation	Urgent appeals
Number of joint communications	15*	77*
Thematic mechanisms		
Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions	2	14
Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers	1	3
Special Rapporteur of the Commission on Human Rights on the question of torture	12	33
Special Representative of the Secretary-General on human rights defenders	2	15
Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences	3	1
Working Group on Arbitrary Detention	0	23
Country specific rapporteurs		
Democratic Republic of the Congo	0	4
Equatorial Guinea	0	1
Islamic Republic of Iran	0	2
Sudan	0	6

* Some allegations and urgent appeals were sent by more than one special rapporteur, which explains why the total is higher.

Annex III

Detailed statistics on urgent appeals (UA), letters of allegation (LA) and press releases (PR) issued by the Special Rapporteur

	Africa			Asia			Eastern Europe			Western Europe and other			Latin America and the Caribbean		
	UA	LA	PR	UA	LA	PR	UA	LA	PR	UA	LA	PR	UA	LA	PR
No. of countries to which UA and LA were sent		27			22			5			2			13	
No. of communications sent by the SR	50	15	1	47	10	-	4	5	-	7	-	1	16	7	-
No. of countries concerned	23	12	1	21	8	-	3	4	-	2	-	1	12	5	-
No. of individuals	332	69	5	411	42	-	3	129	-	59	-	1	67	21	-
No. of women	6	5	-	1	-	-	2	8	-	4	-	-	6	2	-
No. of minors	16	-	-	3	-	-	-	-	-	1	-	-	-	-	-
No. of radio stations	1	2	-	-	-	-	-	-	-	1	-	-	-	-	-
No. of newspapers	15	7	-	4	6	-	1	-	-	-	-	-	2	2	-
No. of television/ media outlets	-	-	-	2	2	-	-	3	-	1	-	-	-	-	-
No. of laws/ directives/ administrative measures	3	2	1	2	1	-	-	-	-	-	-	-	-	-	-
Political parties/ movements/ trade unions	2	1	-	1	1	-	-	-	-	2	-	-	2	-	-
Demonstrations/ civil unrest	1	-	-	2	-	-	1	-	-	-	-	-	1	-	-
No. of Government replies	10	3	-	17	1	-	2	1	-	5	-	-	5	2	-

Annex IV

Joint statement issued on 10 December 2001 by 17 independent experts of the Commission on Human Rights on the occasion of Human Rights Day

On the occasion of United Nations Human Rights Day, the undersigned independent experts of the United Nations Commission on Human Rights strongly remind States of their obligations under international law to uphold human rights and fundamental freedoms in the context of the aftermath of the tragic events of 11 September 2001.

We express our deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that may infringe upon the enjoyment for all of human rights and fundamental freedoms. We deplore human rights violations and measures that have particularly targeted groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media. Concerned authorities have already been requested to take appropriate actions to guarantee the respect for human rights and fundamental freedoms in a number of individual cases drawn to the attention of relevant independent experts. We shall continue to monitor the situation closely.

We remind States of the fundamental principle of non-discrimination which guarantees that everyone is entitled to all rights and freedoms "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (article 2 of the Universal Declaration of Human Rights). We also remind States that under international human rights law some rights cannot be derogated from under any circumstances, including in times of public emergency. These include: the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the freedom of thought, conscience and religion, as well as the principles of precision and non-retroactivity of criminal law except where a later law imposes a lighter penalty. Furthermore, we call upon States to take appropriate measures to uphold the respect for fundamental rights such as the right to liberty and security of the person, the right to be free from arbitrary arrest, the presumption of innocence, the right to a fair trial, the right to freedom of opinion, expression and assembly and the right to seek asylum.

We call upon States to limit the measures taken to the extent strictly required by the exigencies of the situation. Public policies must strike a fair balance between, on the one hand, the enjoyment of human rights and fundamental freedoms for all and, on the other hand, legitimate concerns over national and international security. The fight against terrorism must not result in violations of human rights, as guaranteed under international law.

Abdelfattah Amor, Special Rapporteur of the Commission on Human Rights on religious intolerance

Enrique Bernales Ballesteros, Special Rapporteur of the Commission on Human Rights on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination

Theo van Boven, Special Rapporteur of the Commission on Human Rights on the question of torture

Radhika Coomaraswamy, Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences

Dato' Param Cumaraswamy, Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers

Francis Deng, Representative of the Secretary-General on internally displaced persons

Abid Hussain, Special Rapporteur of the Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression

Asma Jahangir, Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions

Hina Jilani, Special Representative of the Secretary-General on human rights defenders

Miloon Kothari, Special Rapporteur of the Commission on Human Rights on adequate housing as a component of the right to an adequate standard of living

Anne-Marie Lizin, Special Rapporteur of the Commission on Human Rights on human rights and extreme poverty

Juan Miguel Petit, Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography

Gabriela Rodríguez Pizarro, Special Rapporteur of the Commission on Human Rights on the human rights of migrants

Katarina Tomasevski, Special Rapporteur of the Commission on Human Rights on the right to education

Jean Ziegler, Special Rapporteur of the Commission on Human Rights on the right to food

Annex V

Challenges to freedom of expression in the new century: joint statement by the United Nations Special Rapporteur on freedom of opinion and expression, the OSCE Representative on freedom of the media and the OAS Special Rapporteur on freedom of expression

Having met with representatives of NGOs, UNESCO, journalists' associations and human rights experts in London on 19 and 20 November 2001, under the auspices of Article 19, Global Campaign for Free Expression, assisted by Canadian Journalists for Free Expression, we:

Recall and reaffirm our joint declarations of 26 November 1999 and 30 November 2000;

Condemn the criminal terrorist attacks of 11 September 2001 and extend our deepest feelings of sympathy to the victims;

Are of the view that the events of 11 September 2001 and their aftermath highlight the importance of open public debate based on the free exchange of ideas, and should serve as a catalyst for States all over the world to bolster guarantees of freedom of expression;

Express our deep concern about the consequences these events are having for the right to freedom of expression at the advent of the "electronic century" which is witnessing the growing dominance of forms of communication such as broadcasting and the Internet;

Are aware of the fact that broadcasting remains the most important source of information for most people in the world;

Recognize the growing importance of regional mechanisms in promoting the right to freedom of expression and the need to promote such mechanisms in every region of the world, including in Africa and Asia;

Recall the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban and our joint statement on Racism and the Media of 27 February 2001, which stated: "Promoting an optimal role for the media in the fight against racism, discrimination, xenophobia and intolerance requires a comprehensive approach which includes an appropriate civil, criminal and administrative law framework, and which promotes tolerance, including through education, self-regulation and other positive measures";

Adopt the following Declaration:

Countering terror

- Terror must not triumph over human rights in general, and freedom of expression in particular;

- Certain Governments have, in the aftermath of the events of 11 September, adopted measures or taken steps to limit freedom of expression and curtail the free flow of information; this reaction plays into the hands of the terrorists;

- Guarantees for freedom of expression have developed over centuries but they can easily be rolled back; we are particularly concerned that recent moves by some Governments to introduce legislation limiting freedom of expression set a bad precedent;

- We are of the view that an effective strategy to address terror must include reaffirming values and strengthening democratic values, based on the right to freedom of expression;

- The events of 11 September have brought in their wake a rise in racism and attacks against Islam; we call on Governments, as well as the media, to do everything within their power to combat this dangerous trend.

Broadcasting

- Promoting diversity should be a primary goal of broadcast regulation; diversity implies gender equity within broadcasting, as well as equal opportunity for all sections of society to access the airwaves;

- Broadcast regulators and governing bodies should be so constituted as to protect broadcasters against political and commercial interference;

- Effective measures should be adopted to prevent undue concentration of media ownership;

- Media owners and media professionals should be encouraged to conclude agreements to guarantee editorial independence; commercial considerations should not unduly influence media content;

- We are of the view that elected political officials and members of Government who are media owners must separate their political activities from their media interests.

The Internet

- The right to freedom of expression applies to the Internet, just as it does to other communication media;

- The international community, as well as national Governments, should actively promote universal access to the Internet, including through supporting the establishment of information communication technology (ICT) centres;

- States should not adopt separate rules limiting Internet content.

22 November 2001

Abid Hussain, United Nations Special Rapporteur on freedom of opinion and expression
Freimut Duve, OSCE Representative on freedom of the media
Santiago Cantón, OAS Special Rapporteur on freedom of expression

Annex VI

Joint statement by the United Nations Special Rapporteur on freedom of opinion and expression, the OSCE Representative on freedom of the media and the OAS Special Rapporteur on freedom of expression on Racism and the Media

In support of the objectives and with the desire to make a contribution to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, we:

Reaffirm that the promotion of equality, and freedom from racism, discrimination, xenophobia and intolerance are essential to the realization of human rights and freedoms;

Stress the fundamental importance of the right to freedom of expression, including of the media, for the personal development, dignity and fulfilment of every individual, for the promotion and protection of equality and democracy, for the enjoyment of other human rights and freedoms, and for the progress and welfare of society;

Note with concern the prevalence of racism and discrimination, as well as the existence in many countries and regions of the world of a climate of intolerance, and the threat these pose to equality and full enjoyment of human rights and freedoms;

Recognize the positive contribution the exercise of the right to freedom of expression, particularly by the media, and full respect for the right to freedom of information can make to the fight against racism, discrimination, xenophobia and intolerance;

Recognize as harmful all forms of expression which incite or otherwise promote racial hatred, discrimination, violence and intolerance and note that crimes against humanity are often accompanied or preceded by these forms of expression;

Are cognizant of the need to ensure a balance between efforts to combat racism, discrimination, xenophobia and intolerance, and protection of the right to freedom of expression;

Reiterate the need to respect the editorial independence and autonomy of the media;

Desire to make a contribution to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;

Adopt the following joint statement:

Promoting an optimal role for the media in the fight against racism, discrimination, xenophobia and intolerance requires a comprehensive approach which includes an appropriate civil, criminal and administrative law framework, and which promotes tolerance, including through education, self-regulation and other positive measures.

These efforts must be made with the realization that respect for freedom of expression and information ensures that all citizens have access to information which helps them form their opinions and challenges their views, and which they need to make decisions.

Civil, criminal and administrative law measures

Any civil, criminal or administrative law measures that constitute an interference with freedom of expression must be provided by law, serve a legitimate aim as set out in international law and be necessary to achieve that aim. This implies that any such measures are clearly and narrowly defined, are applied by a body which is independent of political, commercial or other unwarranted influences and in a manner which is neither arbitrary nor discriminatory, and are subject to adequate safeguards against abuse, including the right of access to an independent court or tribunal. If these safeguards are not in effect, there is a very real possibility of such measures being abused, particularly where respect for human rights and democracy is weak, and hate speech laws have in the past been used against those they should be protecting.

In accordance with international and regional law, hate speech laws should, at a minimum, conform to the following: no one should be penalized for statements which are true; no one should be penalized for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence; the right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance; no one should be subject to prior censorship; and any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.

These standards should also apply to new communications technologies such as the Internet, which are of enormous value in promoting the right to freedom of expression and the free flow of information and ideas, particularly across frontiers and at the global level. Any restrictions on these new communications technologies should not limit or restrict the free flow of information and ideas protected by the right to freedom of expression, or enable the authorities to interfere with the work of, or intimidate, human rights defenders.

Defamation laws have in some cases been used to limit the right to freely identify and openly combat racism, discrimination, xenophobia and intolerance. To prevent this from happening, defamation laws should be brought into line with international standards on freedom of expression, in particular as outlined in our joint declaration of 30 November 2000.

Freedom of information

The free flow of information and ideas is one of the most powerful ways of combating racism, discrimination, xenophobia and intolerance. There should be free access to information which exposes or otherwise helps to combat these problems, whether that information is held by public or private bodies, unless denial of access can be justified as being necessary to protect an overriding public interest. In addition, States should ensure that the public has adequate access to reliable information relating to racism, discrimination, xenophobia and intolerance including, where necessary, through the collection and dissemination of such information by public authorities.

Promoting tolerance

Media organizations, media enterprises and media workers - particularly public service broadcasters - have a moral and social obligation to make a positive contribution to the fight against racism, discrimination, xenophobia and intolerance. There are many ways in which these bodies and individuals can make such a contribution, including by: designing and delivering media training programmes which promote a better understanding of issues relating to racism and discrimination, and which foster a sense of the moral and social obligations of the media to promote tolerance and knowledge of the practical means by which this may be done; ensuring that effective ethical and self-regulatory codes of conduct prohibit the use of racist terms and prejudicial or derogatory stereotypes, and unnecessary references to race, religion and related attributes; taking measures to ensure that their workforce is diverse and reasonably representative of society as a whole; taking care to report factually and in a sensitive manner on acts of racism or discrimination, while at the same time ensuring that they are brought to the attention of the public; ensuring that reporting in relation to specific communities promotes a better understanding of difference and at the same time reflects the perspectives of those communities and gives members of those communities a chance to be heard; and promoting a culture of tolerance and a better understanding of the evils of racism and discrimination.

27 February 2001

Abid Hussain,United Nations Special Rapporteur on freedom of opinion and expression
Freimut Duve,OSCE Representative on freedom of the media
Santiago Cantón, OAS Special Rapporteur on freedom of expression

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/75/Add.1
17 January 2002

Original: ENGLISH
ENGLISH AND SPANISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Agenda item 11 (c) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Report submitted by Mr. Abid Hussain, Special Rapporteur, in accordance with Commission on Human Rights resolution 2001/47

Addendum

Mission to Argentina

GE.02-10155 (E) 270301

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Introduction

1. This report has been prepared pursuant to resolution 2001/47 of the Commission on Human Rights. It presents and analyses information received by Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, before and during his visit to Argentina from 25 June to 2 July 2000, from individuals and non-governmental organizations concerning allegations of violations of the right to freedom of opinion and expression.

2. By letter dated 27 May 1998 addressed to the Permanent Mission of Argentina to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government to a visit to Argentina. The request was reiterated by the Special Rapporteur on 15 November 1999. On 30 March 2000, the Government of Argentina granted the request.

3. The Special Rapporteur would like to express his gratitude for the cooperation extended to him by the Government of Argentina in discharging his mandate.

4. The Special Rapporteur would also like to thank sincerely the former Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States, Santiago Cantón, and his Office, for his cooperation, assistance and advice in the preparation of the mission to Argentina, the first undertaken to Latin America since his appointment as Special Rapporteur.

5. The Special Rapporteur would also like to express his appreciation to the United Nations Resident Coordinator and staff of the United Nations Development Programme (UNDP) as well as the United Nations Information Center (UNIC) in Buenos Aires for their efficient preparations and assistance prior to and during the visit.

6. The Special Rapporteur visited the federal capital, Buenos Aires, and the town of Santiago del Estero located in the northern part of the country. He met with the President of the Republic, government representatives, members of parliament and members of the judiciary, both at federal and provincial levels. He also had opportunities to talk with representatives of non-governmental organizations (NGOs) active in the field of human rights, academics, writers, media professionals, witnesses to and victims of alleged violations and other interested members of civil society.

7. The Special Rapporteur also participated in the closing ceremony of a training session organized by the Ministry of Justice entitled "Derechos y deberes de la profesión del periodista a la luz de los derechos humanos" ("Rights and duties of the professional journalist in the light of human rights"). At the end of his mission, the Special Rapporteur held a press conference at UNIC Buenos Aires.

8. Finally, the Special Rapporteur would like to take this opportunity to thank those he met for their generous efforts to assist him during his visit to Argentina, in particular those who provided him with reports and documentation. A list of persons he met during the visit appears in the annex.

I. GENERAL BACKGROUND AND CONTEXT

9. During the greater part of the twentieth century, the Government of Argentina, which established national unity and adopted a constitution in 1853, tended to alternate between military and civilian regimes. In 1983, Argentina returned to democracy after seven years of military rule. Eighteen years on, Argentina is still a society deeply marked by the military junta which ruled the country from 1976 to 1983. During that period, a tragic one in Argentine's history, thousands of people were abducted by the security forces, disappeared or went into exile. The Constitution was suspended in 1976 by the junta and replaced by the "Acta fijando el propósito y los objectivos basicos para el proceso de reorganization nacional" ("Act setting the basic goals and objectives of national reorganization"). All political and trade union activities were halted and the Congress (i.e. the Senate and Chamber of Deputies) was dissolved. The junta restricted and banned fundamental freedoms, including the freedom of opinion and expression. Media censorship was widespread and no political opposition was allowed.

10. The democratic regime of President Raúl Alfonsín, who was elected in October 1983, lifted the ban on political parties and restored other basic liberties suspended during military rule. In the search for the truth about human rights violations committed during the so-called "dirty war", the civilian Government set up the Comision Nacional sobre la Desaparición de Personas (National Commission on Disappeared Persons) (CONADEP). The Commission recorded 8,960 cases of disappearances but underlined that the true figure might be much higher. Disappearance cases included those of about 200 children, born in clandestine detention centres during the captivity of their mothers, some of whom are believed to have been taken away and given to childless couples close to the military. These cases were included in the 1984 report of the Commission, Nunca Mas (Never Again). The Commission also found that there were 340 secret detentions centres in Argentina and concluded that the armed forces had violated human rights in an organized manner by making use of the State apparatus.

11. Nine former military leaders were accused of human rights violations. Their trial began in April 1985. Several hundred prosecution witnesses gave testimonies which revealed a campaign of systematic atrocities perpetrated by the military regime. In December of the same year, four of the accused were acquitted but the remaining five were convicted. General Jorge Rafael Videla and Admiral Emilio Eduardo Massera[1] were sentenced to life imprisonment.

12. The investigations into past human rights violations committed during the "dirty war" were, however, brought to a standstill in 1986 following the adoption by the Congress of Law 23.492, the so-called Full Stop Law, which set deadlines for courts to complete the investigations. In addition, in 1987 Law 23.521, known as the Law of Due Obedience, instructed judges to apply the principle of due obedience to all officers below the rank of colonel and close any cases against them. This legislation provoked great controversy in Argentina, in particular among the relatives of the disappeared, as there are no longer legal means of bringing to justice those responsible for human rights abuses committed during the military rule.

13. The case of the mothers of victims needs to be looked into with much greater sympathy and understanding in Argentina. Organizations of mothers are working to locate the killers of their children and would like them to be brought to justice. "Truth trials" could be organized which could become the wellspring of patriotic feelings and provide a framework for preventing such adversity being faced by the community in the future.

14. In October 1989 and December 1990, the successor to President Alfonsín, Carlos Saúl Menen, who was elected in July 1989, pardoned high-ranking military officials implicated in human rights violations and convicted in 1985. Former high-ranking military rulers thus could only be accused of stealing babies.

15. An important step towards truth and justice was taken in March 2001 when Judge Gabriel Cavallo[2] ruled the Due Obedience and Full Stop Laws unconstitutional and void. However, their repeal has been interpreted as not being effective retroactively, so that cases of human rights violations committed during the military Governments continue to be covered by them.

16. In 1983, Argentina returned to the principles of the 1853 Constitution, which established a federal system. Administratively, the country consists of a Federal District and 23 provinces. However, it is worth noting the words of Félix Luna, a prominent Argentine historian and journalist, who stated that "Argentina is a federal country both by constitution and vocation yet its geographical arrangement condemns it to centralism and to dependence on Buenos Aires".[3] In 1994 a major constitutional reform took place: 19 new articles were included and 40 existing articles amended. Furthermore, a chapter on "New Rights and Guarantees" was added. The 1994 Constitution establishes a separate executive and bicameral legislature and an independent judiciary.

17. During the past 18 years, important steps have also been taken to set up, generally by decree, governmental structures and institutions aimed at dealing with human rights issues.

18. Besides the constitutional reform, the restoration of democracy has also permitted the plurality of voices and freedom of press to be restored. The independent press which was silenced by the military regime as well as human rights NGOs, the Asociación Madres de la Plaza de Mayo in particular, played a crucial role in denouncing human rights violations. According to a public opinion poll conducted in March 2001 in Buenos Aires Federal Capital District and Buenos Aires Province, the media, along with the Church, are the institutions with the best image, in particular among the youth.

19. However, in spite of the return to democracy, death threats, physical attacks and other forms of intimidation against journalists have been reported. The pressure on the media was intense, in particular during the early 1990s. Between 1993 and 1999, three journalists[4] were killed and several hundred harassed, prosecuted and threatened with lawsuits mainly on defamation charges. The majority of attacks against journalists were motivated by their investigations into corruption involving criticism of authorities. In several cases the involvement or acquiescence of members of the police and other security services was alleged. In spite of the fact that in some cases official complaints have been filed with the relevant authorities, inquiries have been initiated in only a few cases and many have remained unclarified.

20. At the beginning of this new century, Argentina is facing very severe economic and social problems. Following several years of economic growth as a result of economic reform and a structural adjustment programme, which included privatization and trade and financial sector liberalization, the economy slowed down in 1998 and in 1999 entered into recession. The unemployment rate is more than 15 per cent. The large numbers of under- and unemployed workers have given rise to frequent demonstrations, some of which were broken up with violence.

21. The present Government is more concerned with the needs of the people but is unable to devise an innovative socio-economic system which would meet the requirements of the people. The economic policies are slow in formulation and halting in implementation. Though the Government is trying to reach out to the people a coherent strategy is lacking. Lack of resources for socio-economic activities can to some extent explain the economic slowdown, but the art of policy-making is to identify a range of effective alternatives and mobilize people's support to implement them. The State is required to play a much more aggressive role in this respect. Privatization has not solved the problem and there is resentment against the joblessness which privatization has created. There are also voices heard against the World Trade Organization. Since globalization is inescapable, leadership should seek to transform people's reactions towards it through a process of public education. President de la Rua is respected and people are looking to him for more progressive laws to be enacted by the State. Jobs and security will have the inevitable consequence of strengthening the forces of human rights. The two strengthen each other. From reforms forces of human rights derive their appeal.

II. LEGAL FRAMEWORK

22. In this section, the Special Rapporteur will briefly consider some aspects of the international, regional and national legal frameworks governing the protection of the right to freedom of opinion and expression in Argentina. He will conclude with a brief presentation of the judicial system.

A. International obligations

23. Argentina is a Member State of the United Nations and is thus bound to respect the rights and guarantees set out in the Universal Declaration of Human Rights, article 19 of which enshrines the right to freedom of opinion and expression.

24. Argentina has also accepted a wide range of international obligations in the field of human rights, notably those contained in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol; the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

B. Regional obligations

25. Argentina, furthermore, is a founding member of the Organization of American States (OAS), which was established in 1948. Argentina has ratified the American Convention on Human Rights (Pact of San José) which guarantees in its article 13 the freedom of thought and expression.

26. It is to be noted that article 44 of the American Convention provides that any person or group of persons, or any non-governmental entity legally recognized in one or more member States of the Organization, may lodge petitions with the Inter-American Commission on Human Rights (IACHR) containing denunciations or complaints of violation of this Convention by a State party.[5]

27. In October 1997, the IACHR created the mandate of a Special Rapporteur for Freedom of Expression. His mandate derives from article 13 of the American Convention. This mechanism is extremely important as it not only covers immediate notification to the Commission of serious cases of violations of the right to freedom of opinion and expression, but also provides for advocacy and technical assistance projects. One of the most significant achievements of the Special Rapporteur has certainly been the drafting and the development of the Inter-American Declaration of Principles on Freedom of Opinion and Expression, which was adopted by the IACHR at its one hundred and eighth regular session in October 2000. The Declaration comprises 13 principles covering key issues such as the right to access information, defamation laws and confidentiality of sources.

C. National legislation

1. The Constitution

28. The Constitution was adopted at Santa Fé on 1 May 1853. The text was amended in 1860, 1866, 1898 and 1957. On 22 August 1994, the National Constituent Convention approved amendments to the Constitution which came into effect on 24 August 1994.[6] Indeed, article 32 states that "[t]he Federal Congress shall not enact laws restricting the freedom of printing or establishing federal jurisdiction over it". In addition, article 14[7] of the 1994 Constitution provides for the right to freedom of opinion and expression and article 43, paragraph 3, states "the secret nature of journalistic information shall not be impaired".

29. It is also important to underline that the 1994 Constitution provides in its article 75 (22) that treaties and concordats have a higher hierarchy than laws and that the instruments list above to which Argentina is party have constitutional hierarchy, and are to be understood as complementing the rights and guarantees recognized in the Constitution.

2. Legislation on the media

30. There are no legal norms that specifically regulate the activities of the print media. However, with reference to television and radio, the Federal Committee on Radio Broadcasting (COMFER) is the authority in charge of applying the 1981 Law on Radio

Broadcasting 22,285 and its regulating decree. In principle, COMFER can order the immediate and pre-emptive suspension for 48 hours of any broadcast which violate the Law or its regulations. A court may order suspension for a maximum of 10 days without affecting the due course of the process to determine criminal responsibility.

31. Law 22,285, which was enacted by the last military regime, is a product of the security concerns which dominated that Government. On 14 March 2001, the President transmitted to the parliament a draft bill on the subject, which will be explained more comprehensively below, with a view to adapting the law to the new situation of democracy.

3. Other laws and institutions with a direct impact on the exercise of the right to freedom of opinion and expression

(a) Libel and slander

32. Offences relating to libel and slander are included both in the Penal and the Civil Code of Argentina.

33. The offences of libel and slander are contained in the 1992 Penal Code, in articles 109 to 117. Articles 111 and 113 deal specifically with the crimes of slander and libel against a public official and figures. Furthermore, article 111 provides that a person accused of libel is required to prove the truth of the accusation only in the following cases: (a) if the purpose of the accusation was to defend or guarantee a matter of current public interest; (b) if the act attributed to the person allegedly libelled led to criminal prosecution; (c) if the plaintiff requested proof of the accusation. If the truth of the accusations can be proved in these cases, the accused is exempt from punishment. Furthermore article 113 states that anyone who publishes or reproduces, by any means, defamatory statements made by another shall be punished as the author of the libel or slander.

34. The Civil Code in its article 1089 deals with defamation, libel and slander. It states that if a violation of law is any type of slander or libel, the offended party shall only have the right to demand monetary compensation if he is able to prove that the slander or libel caused actual damage or the loss of an appreciable amount of money, and as long as the guilty party does not prove the truth of the accusation.

(b) Right to assembly

35. Article 14 bis of the Constitution guarantees the right to organize free and democratic trade union organizations subject only to registration. Article 4 (b) of Act No. 23,551 recognizes the right of workers to join, not to join or to leave existing associations.[8] The right to create political parties in conformity with democratic principles is also guaranteed. The Constitution also provides for the freedom to hold peaceful meetings and to participate in peaceful meetings. The right to strike is also guaranteed.

(c) Institutions aimed at promoting and protecting human rights and the right to freedom of opinion and expression

36. Since the restoration of democracy in 1993, several such institutions have been set up. Among them are: the Office of the Under-Secretary for Human Rights at the International Level (Decree No. 932 of 11 June 1986) within the Ministry for Foreign Affairs, International Trade and Worship, and the National Institute to Combat Discrimination, Xenophobia and Racism (Act No. 24,515 adopted in 1995 by the Congress).

37. In addition, special forums with competence in the field of human rights have been established within the Congress. Thus, there are Commissions on Human Rights and Guarantees in both the Senate and the Chamber of Deputies, established in 1983 and 1992 respectively, and also the Freedom of Expression Commission of the Senate. In December 1993, the Congress adopted Act No. 24,284 establishing the Defensor del Pueblo (Ombudsman).

4. The judicial system

38. The 1994 Constitution provides for an independent judiciary. Judicial power in Argentina is exercised by the Supreme Court of Justice and other courts established by Congress within the national territory (Constitution, art. 108). In no circumstances may the President exercise judicial functions, assume jurisdiction over pending cases or reopen cases that have been closed (art. 109). The judicial system is divided into federal and provincial courts, each headed by a supreme court with chambers of appeal and section courts below it.

39. Prior to 1994 reforms, judges were appointed by the executive with the approval of the Senate. Following the 1994 constitutional reform, appointments will be based on a binding list of three candidates proposed by the Council of the Magistrature (art. 114). This Council will be reconstituted periodically in such a way as to achieve balanced representation of the political bodies resulting from the popular election, from among judges of all the courts, lawyers on the federal register, and other persons from academic and scientific fields; the size and structure of the Council is spelled out in the special law establishing it.

40. It is the responsibility of the Federal Supreme Court and the lower courts to hear and decide all cases relating to matters governed by the Constitution, the laws of the nation or treaties with foreign nations. The Supreme Court exercises jurisdiction over appeals in accordance with the rules and exceptions prescribed by Congress.

41. It has been brought to the attention of the Special Rapporteur that the Supreme Court, at its own discretion and solely on the basis of article 280 of the Code of Civil Procedure, can dismiss an extraordinary appeal on the grounds that there has been no violation of federal norms, or when the issue before the Court is without substance or irrelevant.

III. PRINCIPAL CONSIDERATIONS AND CONCERNS

42. In order to assess the situation of the right to freedom of opinion and expression in Argentina, the Special Rapporteur met with a large number of government officials, media professionals, writers, academics, lawyers, human rights organizations and members of journalists' associations and trade unions.

A. The media

43. The Special Rapporteur will first provide the historical background of the media. He will then look at the structure and principal characteristics of the media and examine the reform of the broadcast media. He will conclude by identifying the principal characteristics of the violations of the freedom of the press in order to identify trends and patterns.

1. Historical background

44. The Special Rapporteur was informed that the expansion of the print media began towards the end of the nineteenth century as a result of economic growth and a wave of immigration originating mainly from the European[9] continent.

45. The first national newspaper in Argentina, La Nación, was founded in 1870 and at the end of the nineteenth century more than 100 provincial newspapers were established. Their circulation was high, for example, La Prensa, established in 1880, sold more than 1.5 million copies in 1914. The fast and widespread growth of the print media continued during the first half of the twentieth century. According to information received by the Special Rapporteur, in 1950, among the seven national dailies published in Argentina, three had a circulation exceeding 150,000 copies. The high level of literacy among the population resulting from the establishment of free and obligatory education in 1888 and the emergence of an important middle class also played a major role in the development of the print media.

46. The worldwide media boom in the 1990s had a strong impact on the situation of the media in Argentina. Mergers and acquisitions introduced the concept of multimedia information. A lot of medium and small media holdings were absorbed.

2. Structure and characteristics of the media

(a) The print media

47. According to information made available to the Special Rapporteur, Argentine newspapers are in general either national or provincial. At present, there are more than 230 newspapers: 15 are dailies produced in Buenos Aires with national distribution; 77 are provincial dailies printed and distributed in the Province of Buenos Aires, which is the largest province of the Republic; and 134 are provincial or local dailies published and distributed locally.

48. About 25 papers have a circulation of over 10,000. The three main national dailies are Clarín (with a daily circulation of 500,000 copies and more than 1 million on Sunday, it is the largest newspaper in the Spanish-speaking world), La Nación (250,000) and Página 12 (80,000). Many Argentine newspapers and magazines are also available on the Internet.

49. Coverage in dailies focuses on Argentina's domestic politics. The largest national dailies devote 10-15 per cent of space to international coverage, with the exception of the national English-language daily, The Buenos Aires Herald, which usually devotes only 5 per cent of its

pages to international news. It is to be noted that Latin American news predominates in the international affairs section in the largest provincial dailies with international affairs sections. International newspapers in English, Spanish and German are also available.

50. Furthermore, the attention of the Special Rapporteurs was drawn to the large number of magazines, newsletters and pamphlets produced by political parties, trade unions, NGOs and specific communities. According to the information received, the print media in Argentina are ideologically wide-ranging and cover the entire country.

(b) The broadcast media

51. The end of the government monopoly of the electronic media in 1986 has opened up the airwaves to a greater and broader variety of programmes. According to the Argentine Television Broadcasters Association (ATA), there are 44 open television channels in Argentina. Twenty-nine are private stations while others are public national and provincial television channels.

52. There are no official data provided by the Argentine Cable Television Association (ATVC), on the number of cable television stations (access by subscription) in Argentina. However, according to unofficial sources, between 20 and 25 stations are daily airing in Argentina.

53. Over the last decade, cable and satellite television have increased impressively. It is estimated that about 28 million out of a total population of 36 million people are now linked to cable TV.

54. As in other countries, media conglomerates have great influence. The Grupo Clarín, which publishes the national daily Clarín is Argentina's largest multimedia group. Téléfonica Media is the second with two open television channels in Buenos Aires. The majority of them are privately owned with an increasingly prominent role being played by foreign investors.

55. With regard to the public sector, the Special Rapporteur has been informed that in April 2001 a public media holding company was set up, Canal 7, comprising a television station, the national radio and a news agency, Telem. The Special Rapporteur was informed that the company is administered by a board of three directors, all designated by the executive branch of Government (one by the Secretary-General of the Presidency, one by the Ministry of Economy and one by the Ministry of Culture). The members of the board explained that education is the main purpose of this company. Specific programmes for religious and ethnic minorities are also broadcast. It has also been reported that a few provincial governments also own broadcast media outlets.

56. According to the Argentine Private Broadcasters Association (ARPA), there are no official data on the number of radio stations in Argentina but it is estimated that there were about 6,000 stations countrywide, including FM, AM and community stations.

(c) The Internet

57. As far as the development of the Internet in Argentina is concerned, the Special Rapporteur was told during his meetings with media professionals that no interference or control by governmental authorities is exercised. The Special Rapporteur was informed that in the last three years the Internet has become well developed, in both the public and private spheres. He noted with great satisfaction that the public can easily have access to the Internet and many Internet cafés were established. The prices seem to be affordable.

3. Reform of the broadcast media

58. The Special Rapporteur has been informed that on 14 March 2001, the President transmitted to the Congress a draft bill proposing a reform of the 1981 broadcasting law. The Special Rapporteur's attention was drawn to the fact that the current law to be amended was drafted in conformity with the document of the military junta dated 20 September 1977 establishing the objectives, strategies and rules to be applied to broadcasting services or agencies based on the 24 March 1976 Act establishing the basic purposes and objectives of the national reorganization process.

59. Representatives of the Government, academics, journalists and trade unions have been consulted since March 2000 on the reform process. A main aspect of the bill is that it would allow groups of broadcasting organizations to obtain regional or national licences. In addition, the draft bill establishes rules and regulations for radio and television programming.

60. The bill also introduces a system of air-time allocation to certain interest groups, and the classification of programmes. Furthermore, the bill creates a sort of consumer advocate for users of the broadcast services. This person acts as a mediator between COMFER and its customers, receiving complaints, keeping track of the cases submitted and informing the competent authorities about the functioning of the communication sectors. While the current law provides that licences can be granted only to physical or legal persons and the national, provincial and municipal governments, the bill would allow cooperatives, universities and Churches to be granted licences.

61. The Special Rapporteur is satisfied with the contents of the bill and welcomes the fact that the process of preparing it has been participatory and has involved the major concerned actors. He welcomes the fact that the new law will enable licences to be granted to universities, Churches and cooperatives.

62. The Special Rapporteur has also noted with great interest the launching of a joint COMFER-Ministry of Education project aimed at establishing radio stations in rural and border areas.

4. Principal characteristics of the violations of freedom of the press: patterns and trends

63. During his mission, the Special Rapporteur noted that the freedom of the press is, by and large, respected. It is very encouraging that almost all the persons he consulted - writers of great

eminence, journalists of high political standing, outstanding citizens and Noble Prize winners - were unanimous in the view that Argentina now enjoys a high level of freedom and respect for human rights. There are no complaints of governmental intervention in the right of authors to express their views and opinions through writings in the press or in books on any subject of their choice. Censorship is not exercised by the State nor newspapers closed down, nor even warnings given to curtail the freedom to write. Even cartoons and critical writing about the highest authorities of the State find expression in the media. But it might be mentioned that any criticism of the Church is not welcome.

64. Despite this positive evolution, the Special Rapporteur was informed of a number of cases of violations of the freedom of the press. According to the annual report of the non-governmental organization Peridistas,[10] during the year 2000 some 130 violations were registered, a 10 per cent reduction as compared with 1999. This trend results primarily from a decrease in the number of cases of verbal attacks by governmental officials against journalists and of physical assaults against both persons and property. According to the Special Rapporteur's interlocutors, many such cases occurred in the provinces.

65. Besides cases of legal action for defamation brought against journalists, which will be examined in a specific section of this report, the Special Rapporteur was informed by certain NGOs during his mission that the press was not totally exempt from intimidation and threats. Indeed, the cases included in the communications[11] transmitted by the Special Rapporteur to the Government concerned cases of: (a) threats and use of violence (Hernán López Echagüe, Marcello Bonelli and Santo Biasatti in 1993); (b) death threats, attacks and harassment of journalists (Ariel Garbarz, Magdalena Ruiz Guiñazú and Antonio Fernández Llorente in 1997); and (c) intimidation of a journalist affiliated with a media trade union (Ms. A.M. Careaga in 1998). In these cases, it alleged that the authors were officials, including police.

66. The Special Rapporteur, while noting with great satisfaction that no case of assassination has taken place since 1999, was informed that the investigations into previous murders[12] have yet to be completed. In this regard, the Special Rapporteur sent a communication on 27 May 2001 to the Government[13] regarding the widely known cases of José Luis Cabezas and Mario Bonino, murdered in January 1997 and November 1993, respectively. He was equally concerned that the investigation into the murder of Ricardo Gangene[14] has not made significant progress. With regard to these murders, the Special Rapporteur is concerned by the slowness of the judiciary and that the investigations appear not to have been thorough.

67. Concerning the case of José Luis Cabezas, the Special Rapporteur, while expressing satisfaction that the perpetrators have been identified and tried,[15] reports that some aspects of the investigation need to be clarified. In this connection, he strongly encourages the independent commission set up to continue the investigation into the unclear aspects of this case to produce its conclusions as soon as possible. The Special Rapporteur is also concerned about the threats and legal actions against the lawyer of the Cabezas family. According to the information provided, the lawyer has been suspended from the Bar for several years. In light of the seriousness of the situation of the case, the Special Rapporteur has transmitted it to his colleague, the Special Rapporteur on the independence of judges and lawyers, for follow-up.

68. The Special Rapporteur has been informed of other cases of attacks, insults, intimidation and legal actions, both in Buenos Aires and in the provinces, during the past two years to which he would like to draw the attention of the authorities.

69. It is reported that on 29 March 2000, unidentified persons fired at the home of Bernardo García Hamilton, a member of the board of directors of the newspaper La Gaceta de Tucumán. The family was asleep at the time. It is believed that this incident is related to the investigation into cases of corruption conducted by La Gaceta.

70. Photojournalist Rolando Andrade, of the daily La Nación, was attacked on 6 April 2001, allegedly by two bodyguards of Miguel Etchecolatz, Buenos Aires police chief during the last dictatorship. The assault allegedly occurred while Mr. Andrade was covering a public proceeding against Mr. Etchecolatz for public intimidation.[16]

71. On 29 March 2000, journalist Luis Giménez of the Telam news agency received a telephone threat from a person who reportedly said: "You're going to be another Cabezas." Mr. Giménez said that he had received telephone threats before.

72. It is also reported that Jorge Larrosa, a photographer for the newspaper Página 12, began to receive anonymous telephone threats in August 2000, three days after his work was introduced in court as evidence against a local policeman. An unidentified man called the Página 12 newsroom and told a receptionist, "Tell the photographer to be careful." Some days later, another anonymous caller phoned Página 12 and told fellow journalists, "That meddling photographer is a dead man." It is believed that the threats were related to coverage by Página 12 of a botched 1999 police operation known as "the massacre of Villa Ramallo", in which police were accused of colluding with thieves who took a group of persons hostage in the course of a bank robbery in the town of Villa Ramallo, Buenos Aires Province.[17] The journalist filed a complaint with a local court.

73. The Special Rapporteur was also informed of several cases of intimidation. On 4 January 2000, the Minister of Security of Buenos Aires Province, Aldo Rico, threatened and insulted a group of photographers who were covering his visit to Pinamar. Angered by the presence of the photographers, the official accused them of printing "lies and hypocrisy" and threatened to send the police "to chase them". A few days later, he publicly apologized.

74. The Special Rapporteur received also information about cases of intimidation which occurred outside Buenos Aires. He will not make reference to cases in Santiago del Estero as a section concerning this province is included in this report.

75. Eduardo Delbono, owner of and reporter for the radio station Ciudad de Merlo, filed a complaint with the prosecutor's office after reportedly receiving a death threat from two individuals on 20 November 2000. It is reported that one said, "Son of a thousand bitches, you better stop getting mixed up with the municipality or else you are going to show up by the Reconquista river. You will not be the first nor the last in Merlo." The journalist attributed the threat to the station's refusal to honour a request from the city that it not air calls from some listeners who criticized the Merlo city government.

76. It was reported that on 10 November 2000, an adviser to the Governor of San Luis Province threatened two journalists, Oscar Ángel Flores, head of news programming and host of two daily programmes on Radio Dimensión, and correspondent for the daily Clarín, and Mario Otero, host of two programmes on San Luis University FM Radio and publisher of the biweekly El Decamerón. The journalists were blamed for questions asked during a press conference with the Governor concerning a case of corruption that involved individuals who were said to be close to him. The Adviser to the Governor told the journalists, "What happened before is going to happen to you", reportedly a reference to the restrictions and intimidation that media in San Luis had been subjected to in past years.

77. The Special Rapporteur was informed that in the Tucumán Province, on 28 May 2000, a group of armed individuals attacked distribution centres for the newspaper La Gaceta. The assailants broke down the doors, seized copies of the paper and burned them in the street. The attack is presumed to be a result of the newspaper's conflicts with the union of newspaper and magazine vendors. As a result of the attack, several people were injured and vehicles were damaged.

78. Finally, the Special Rapporteur has been informed that more recently, in May 2001, the High Court of Neuquén Province took a decision to request the local Bar Association to impose sanctions against Mariano Mansilla,[18] allegedly in retaliation for exercising his right to express his opinion in human rights cases which he had defended. It has been reported to the Special Rapporteur that harassment of Mr. Mansilla started the day after his return from Geneva where he attended the fifty-seventh session of the Commission on Human Rights, together with his colleague, Matías Cremonte. On his return, he gave an interview to the newspaper La Manana del Sur in which he expressed his opinion on the cases he was handling and was critical of the attitude of the Government and of certain of the Neuquén judicial authorities. These sanctions will effectively put him at risk of forfeiting the right to exercise his profession.

B. Other issues and concerns relevant to the promotion of and respect for the right to freedom of opinion and expression

79. The Special Rapporteur will examine in this section other issues that have an impact on the right to freedom of opinion and expression. After a review of cases involving allegations of defamation (contempt), one of the main restrictions on the right of freedom of opinion, the Special Rapporteur will examine the issues of the public image of the President, the right to reply, habeas data and access to information. He will conclude with particular issues that deserve attention such as the freedom of opinion of minorities, the conditions of work in the media sector, and demonstrations.

1. Defamation: the main restriction on the right of freedom of opinion and expression

80. It was reported to the Special Rapporteur that criminal libel and slander and contempt, also known in Latin America as desacato laws, constitute one of the main restrictions on the right to freedom of opinion and expression in Argentina. The OAS Special Rapporteur also considers that this is one of the major problems in Argentina.[19] It was brought to the attention of the Special Rapporteur that during the rule of former president Carlos Menem many journalists were prosecuted for defamation.[20] [21]

81. The Special Rapporteur would like to refer to his previous reports (E/CN.4/2000/63, paras. 45-52 and E/CN.4/2001/64, paras. 43-47), in which he examines and analyses the issue of defamation and criminal libel. He would like also to make reference to the joint statements he made with the OSCE Special Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe and the OAS Special Rapporteur for Freedom of Expression in November 1999 and 2000 on the issue of defamation law contained in those reports.

82. According to the media, professionals who met the Special Rapporteur, the risk of legal action can discourage some of them from reporting on issues that might be sensitive despite the fact that they are of public interest.

83. In his report E/CN.4/1999/64 (para. 24), the Special Rapporteur expressed his concern that in a number of instances libel and defamation suits or even threats of such suits has had or has potentially had a direct and negative impact on freedom of opinion, access to information and the free exchange of ideas. In his view, this effect, often described as "libel chill", can create a climate of fear in which writers, editors and publishers become increasingly reluctant to report and publish matters of great public interest, not only because of the large awards granted in these cases but also because of the often ruinous costs of defending such actions.

84. Before his mission, the Special Rapporteur was informed by the Office of the OAS Special Rapporteur[22] of the case of Eduardo Kimel, for whom he publicly expressed concern after the journalist was convicted. The Special Rapporteur met with Mr. Kimel during the mission in order to follow up on this case, which started some 10 years ago.

85. In 1989, Mr. Kimel, published a book entitled La Masacre de San Patricio, which recounted how priests ("los Padres Pallotinos") had been killed during the 1976-1983 military dictatorship. Mr. Kimel argued that the action of the judges during the dictatorship was, in general, one of deference to, when not complicit with, the repression of the dictatorship. On 28 October 1991, former judge Guillermo Federico Rivarola, who was in charge of the investigation of the Padres Pallotinos case, brought a legal action against Eduardo Kimel for defamation based on article 109 of the Penal Code. In March 1992, there was a hearing during which no agreement could be reached between the two parties. On 25 September 1995, the Criminal Court of First Instance found Eduardo Kimel guilty and sentenced him to one year in prison and to pay damages of 20,000 pesos (US$ 20,000). On 19 November 1996, the Court of Appeal overturned the judgement and ruled that the opinions expressed by Mr. Kimel did not constitute an insult against Judge Rivarola. The Court considered that the journalist was exercising his right to inform and had had no intention of offending the judge. Judge Rivarola appealed to the Supreme Court, which overruled the Court of Appeal on 22 December 1998 on the ground that its ruling was not based on new facts. The case was sent back to the Court of Appeal which on 17 March 1999 confirmed the sentence of the first instance court. Consequently, the journalist filed an extraordinary appeal with the Supreme Court. Based on article 280 of the Code of Civil Procedure, the Supreme Court rejected that appeal on 14 September 2000 and notified the complainant on 19 September of its final decision. On 6 December 2000 the case was submitted to the Inter-American Commission on Human Rights, which considered it admissible and decided in February 2001 to include it with the Verbistsky, Sanz and Acher cases that were the subject of a "friendly agreement" process with the Government (see below).

86. Another case brought to the attention of the Special Rapporteur is that of television journalist Bernardo Neustadt who was found guilty of defamation based on remarks about a local judge that a guest had made on his talk show, "Tiempo Nuevo". On 9 February 1999, the Buenos Aires Civil Court of Appeals upheld a lower court's judgement against Mr. Neustadt, his television station, Telefé, and the offending guest and imposed a fine of 80,000 pesos (US$ 80,000).

87. One of the Special Rapporteur's objectives during his visit was to observe the status of the bill aimed at the decriminalization of slander and libel and the steps taken by the Government to implement the "friendly agreement" between the Government and the Inter-American Commission.

88. In 1999, former President Carlos Menem filed criminal charges against well-known journalist Horacio Verbitsky for contempt. The NGO Periodistas, of which Mr. Verbitsky is secretary-general,[23] appealed to the Inter-American Commission on Human Rights, which ruled in his favour. Following the petition filed by Periodistas, the Government agreed to a friendly settlement and to repeal its desacato laws. In December 1999, the Congress was asked to consider the bill immediately. The first hearing was held in the Senate the same month, but the bill stalled after a number of representatives expressed reservations.

89. The purpose of this draft law, which was developed by Periodistas, is to modify the provisions of the national civil and criminal codes related to the crimes of slander and libel in order to comply with the principles protecting the right to freedom of opinion and expression contained in the Constitution and in international treaties. The bill eliminates criminal defamation in the case of public figures, thereby complying with the Inter-American Declaration of Principles on Freedom of Expression.[24] It also introduces standards for determining "actual malice".

90. The doctrine of actual malice applies to the assumption of incorrect information by the informant, which does not result in the liability of the informant unless it is proven that in providing the false information, the person acted with criminal intent or in gross fault. Under the current Inter-American doctrine and practice, first articulated by the Supreme Court of the United States of America in The New York Times Co. v. Sullivan in 1964, the plaintiffs must prove not only that the information published is false, but also that the journalists knew, or should have known, that the information was false.

91. The bill proposes that four new paragraphs be added to article 1089 of the Civil Code pertaining to defamation, libel and slander. The first two (new paragraphs 2 and 3), contain the rules pertaining to false or incorrect information which, in the event actual malice is proven, provide for redress or reparations. The third (new paragraph 4) excludes liability in the case of value judgements of any kind. The fourth (new paragraph 5) provides for separate treatment for cases involving the faithful reproduction of information from another source in which the source is exempt from any civil liability, when the source is given.

92. Although the new law would apply only to cases in which public figures are involved, it is the view of the Special Rapporteur that it will provide more protection for journalists.

93. With regard to criminal law, it is proposed that cases related to criticism in the exercise of freedom of opinion would be excluded from criminal liability. To this end, the present article 111 of the Criminal Code would be deleted, as it is incompatible with the constitutional principles on the subject. The new text establishes immunity in the case of information, value judgements and humorous expressions published by the media on topics of public interest referring to public officials or similar persons. In addition, a new text was drafted to replace the present article 113 of the Criminal Code.

94. The Special Rapporteur inquired during his several meetings with authorities about the status of the bill and the action that the Government envisaged in order to comply with the "friendly agreement" with the IACHR. It was explained that, as one year had passed, the bill can be examined by the Congress only if it is introduced again. The Special Rapporteur was informed on the last day of his mission that the Department of Human Rights of the Ministry for Foreign Affairs had transmitted the bill to the President, strongly supporting its reintroduction in Congress. The Special Rapporteur was informed that on 11 July 2001, with reference to the Verbitsky case, the Director of the Human Rights Department informed the Executive Secretary of the IACHR that the Government would send the bill to the Chamber of Deputies of the Congress.

95. The Special Rapporteur welcomes this decision. He would like to refer to his report E/CN.4/1999/64 (para. 26) in which he underlines that "international case law in the area of libel and defamation has consistently found in favour of disclosure and public criticism of public figures, when warranted".

2. The issue of whether the public image of the President was being damaged by the humourists

96. One issue related to defamation is the public image of the President and the way that the humourists deal with it. There is no specific regulation on that issue. The Special Rapporteur was informed that in 2000, Senator Augusto Alasino transmitted a proposal for a bill to the Commission on Freedom of Opinion of the Senate, to curtail "the unlimited use of freedom of expression". The proposal was not examined.

97. During his mission, there was a debate on the issue of whether the image of the President was being damaged by humourists. The Special Rapporteur met with one of the famous humourists, NIK, whose cartoons, including caricatures of the President, are published daily in the newspaper La Nación. The Special Rapporteur was informed that some authorities suggested that the image of the President must be protected by law.

98. The Special Rapporteur stressed that humour should not in any case lead to indignity. He is of the view that it should be restrained by self-regulation and the limits of good taste, not by law. In this connection, the Special Rapporteur welcomes and praises the President for not having taken any of the authors of the satirical depictions of them to court.

3. Right of reply

99. The issue of the right of reply was discussed by the Special Rapporteur with several of his interlocutors during his mission.

100. While there is no mention of the right of reply in the Constitution, article 14 of the American Convention on Human Rights provides:

> "1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
>
> "2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
>
> "3. For the effective protection of honour and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges."

101. While Argentine law does not specifically recognize the "right to reply", the Special Rapporteur has been informed that courts have the authority to compel news outlets to publish statements from individuals who feel that they have been maligned, even in instances where the accuracy of the news report has not been called into question.[25]

102. From the discussions he held with media professionals, as well as with representatives of NGOs and government officials, different - in some instances opposite - points of view were expressed. While the majority of journalists and media owners appear not to be in favour of a systematic right to reply, NGO representatives as well as some government officials underlined that it was sometimes important in order to correct damage.

103. The Special Rapporteur strongly encourages public debate on this specific issue. However, he is of the view that in order to comply with article 14 of the American Convention, if a right-to-reply system is to exist, it should ideally be part of the media industry's self-regulatory system, and can only feasibly apply to facts and not in any case to opinions.

4. Habeas data and access to information

104. Along with the OAS Special Rapporteur for Freedom of Expression, the Special Rapporteur considers that the right to access information held by the Government (public information) and habeas data are clearly related to the right to freedom of information. While the two are similar, the information to which they grant access serves a clearly different function. The information in the first case is public in nature, and the right to that information is governed by the need to make a democratic system work better and to scrutinize (i.e. make accountable) Government. Habeas data, however, provides the opportunity to request information kept in both government databanks and private databanks.[26]

(a) Habeas data

105. In Argentina, article 43, paragraph 3, of the Constitution recognizes habeas data. The Special Rapporteur has been informed that habeas data is regulated by Law 25,326 (Ley de Protecion de los Datos Personales) of 4 October 2000.

(b) Access to information

106. The right to access information is not mentioned as such in the 1994 Constitution. The right to access to information is, however, recognized in the constitutions of the Provinces of Buenos Aires (art. 28) and Chubut (art. 13). This right is regulated by Law 3,764 and Law 104,[27] respectively.

107. The Special Rapporteur was told by the Minister of Justice that his Office was currently in the final stages of preparing a bill on the right to information. He said that a bill was needed in order to comply with the internationally recognized principles of publicizing government acts, that freedom of access to information is a prerequisite for democratic participation, that freedom of information is part of the freedom of expression, and that free access to public information creates transparency in government practices and projects a better image of the public institutions.

108. The draft bill has 13 articles. Article 3 deals with the types of information that the central administration is bound to provide: written documents, photographs, recordings, magnetic and digital formats, as well as any other forms of existing information provided to the administration. Furthermore, the draft bill regards as information material any type of documents financed by the national budget which could serve as a basis for any decision of an administrative nature, as well as the minutes of any official meetings.

109. According to article 4, the administration has 10 days to respond to any request submitted. This period could be exceptionally extended for another 10 days if there are difficulties in providing the required information. It is specified in article 6 that no answer from the administration will be considered as a negative answer. The administration is, however, exempted (art. 10) from complying with article 6 with respect to information classified as confidential for security and political reasons or when such information could endanger the proper functioning of financial system.

110. The Special Rapporteur wishes to recall that under international human rights law, the right to freedom of information can be restricted only in the most serious cases of threats to national security, and to refer in this regard to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (E/CN.4/1996/39, annex), which offer some guidance on this matter.

111. The Special Rapporteur welcomes the initiative to introduce a law on access to information and the fact that the drafting process was participatory. The Special Rapporteur believes that a law on access to information plays an extremely important role in a democratic society in general, and in particular in a country like Argentina which has to deal with the legacy

of military dictatorship and with the human rights violations committed during that period. The Special Rapporteur hopes that the draft bill will be introduced as soon as possible and, after debate, be enacted. The Special Rapporteur strongly encourages the Government to ensure that the bill will enable the public to have access to legislative and judicial information

5. Specific issues

(a) Minorities

112. One other issue that the Special Rapporteur examined during his mission is the freedom of opinion and expression of minorities and, in particular, their access to information.

113. The Special Rapporteur learned with concern that the Argentine media play an important role in maintaining prejudice against some minorities by showing a negative image of them. The Special Rapporteur's attention was drawn to the situation of indigenous communities,[28] illegal migrants[29] and religious minorities.

The indigenous and migrants

114. Despite the fact that the indigenous population is protected by article 75, paragraph 17, of the Constitution, the Special Rapporteur was nevertheless informed by some representatives of NGOs that in practice there is some discrimination and violence against the indigenous population. He was informed that, except for community radio, they have limited access to national and provincial news.

115. The Special Rapporteur will not be able to provide first-hand information with regard to the situation of these two communities as he did not have the opportunity during his mission to meet with them. It has been brought to the attention of the Special Rapporteur by several sources that the Argentine media sometimes, especially in the past few years, contributed to intensifying the prejudices of the Argentine population against the indigenous and migrants. In fact, the Special Rapporteur was told that the media coverage of migrants often criminalized and demonized them. For example, a recent issue of the magazine La Primera depicted on its cover an image of migrants as thieves.

Religious minorities

116. The Special Rapporteur was, however, able to collect more detailed information with regard to the situation of religious minorities and to meet with their representatives. According to data provided to the Special Rapporteur by NGOs, 88 per cent of the 36 million Argentines are Roman Catholic, 7 per cent Protestant, 1.5 per cent Muslim, 1 per cent Jewish and 2.5 per cent of other beliefs.

117. The Special Rapporteur was informed by the representatives of the Jewish, Arab and Muslim communities that there is no State discrimination policy against religious minorities. They also said that owing to lack of access to the major media outlets, the respective communities had begun to publish their own booklets and newspapers.

118. It has been affirmed to the Special Rapporteur that in some instances the media give a negative image of those communities, in particular the Arab and Muslim populations. For instance, on one of the most popular television shows, Tiempo Nuevo, the host represented Muslims holding the Koran in one hand and a rifle in the other. The Special Rapporteur would like the Arab and Muslim feelings to be respected. He has noted anti-Arab and -Muslim expressions in the media. He was informed that some media broadcast programmes in the Middle East which contained incitements to murder, including the statement by an Israeli rabbi calling for bombs to be planted to kill all Arabs.

119. The representatives of the Muslim community expressed their deep concern over the fact that despite numerous attempts they were not given the opportunity to respond to or correct such information. The representative of the Jewish community indicated that there was anti-Semitism in some sectors of the society, in particular right-wing groups. He underlined, however, that there was no State policy against Jews. With regard to access to the media, it was quite impossible to have access, so the community had its own newspapers.

120. The Special Rapporteur has been informed of steps taken by the authorities to improve the treatment of minorities, in particular the role played by the National Institute to Combat Discrimination, Xenophobia and Racism (INADI). Established in 1995 as a decentralized body within the Ministry of the Interior, its purpose is to develop national policies and practical measures to combat discrimination, to encourage and carry out initiatives aimed at disseminating the principles and legal standards relating to non-discrimination and to inform public opinion. Furthermore, INADI has a mandate to investigate matters pertaining to discrimination. It also provides free legal assistance and advice to those requiring such assistance. The President of the INADI is the Defensor del Pueblo of Buenos Aires.

121. The Special Rapporteur considers, however, that more has to be done to integrate them. He would like strongly to encourage the authorities to launch awareness campaigns aimed at rectifying negative images. It is his view that the Argentine media should help in this regard and be prevented from promoting any kind of racism and discrimination against minorities.

122. Finally, the attention of the Special Rapporteur was drawn to the situation of sexual minorities. Though discrimination against sexual minorities does not fit fully under his mandate, the Special Rapporteur is of the view that their situation deserves attention.[30]

123. He met with representatives of organizations of sexual minorities and transvestites who reported to him cases of violations of human rights because of their sexual orientation. The Special Rapporteur was concerned at the number of such cases.

124. The Special Rapporteur was informed that the provincial legislation allows police to impose detention or sanctions for infractions that do not constitute criminal offences. He has also been informed that in several provinces[31] there is a "Contravention Code" which penalizes those "who are dressed as somebody of the opposite sex" with detention for up to 15 days.

(b) Deterioration of the working conditions of media workers

125. The Special Rapporteur was impressed by the number and the dynamism of journalists' trade unions and associations aimed at promoting freedom of opinion and expression in Argentina.

126. According to the information made available to the Special Rapporteur, the right to assembly is well observed generally. The principal journalists unions are the Federación Argentina de Trabajadores de la Prensa (FATPREN), the Unión de los Trabajadores de la Prensa de Buenos Aires (UTPBA), the Asociación de Reporteros Gráficos Argentinos (ARGRA), and the Asociación de Entidades Periodisticas Argentinas (ADEPA). Some of them have representation at provincial level.

127. One issue of concern brought to the attention of the Special Rapporteur was the deteriorating working conditions of journalists and media professionals as a result of the current economic and financial crisis.

128. The Special Rapporteur has been informed of the existence of Law 12,908 relating to the status of professional journalists (Estatuto de Periodistas Profesionales) and Law 12,921 (Estatuto de Empleados Administrativos de Empresas Periódicas). Generally, the journalists and trade unions the Special Rapporteur met expressed the view that these legal instruments, if correctly applied, provide good protection for journalists. The Special Rapporteur has been informed, however, that more and more frequently the owners do not respect the provisions contained therein.

129. It has been brought to the attention of the Special Rapporteur that the ongoing 36-month recession, the longest in a century, has had an impact on daily newspaper sales which dropped by 30 per cent. Similarly, private and public advertising decreased by 11 per cent in 2000. Contractual patterns have changed. Non-permanent staff has grown from 15 per cent to 50 per cent between 1994 and 2001 and junior staff writers and radio journalists are unpaid interns and/or young journalists working under short-term contracts, which may have an impact on the quality of their work.

130. It has also been brought to the attention of the Special Rapporteur that the two largest newspapers, Clarín and La Nación, reduced their permanent staff by 30 per cent between 1997 and 2000. According to various media analysts, the main problem facing journalists is the lack of job security.

131. The Special Rapporteur believes that poor working conditions and insecure contractual status could affect their independence and also result in self-censorship, as a journalist may fear being fired if he does not follow the editorial line.

132. The Special Rapporteur strongly encourages the media companies to respect the provisions of the two Statutes mentioned above. He would like in particular to refer to article 64 of the Law 12,908 which states that the media companies which receive official advertising should comply with their social obligations to their employees.

(c) Demonstrations

133. In view of the nature of his mandate, the Special Rapporteur would like to refer also to questions related to freedom of assembly.

134. The Constitution provides for the right of assembly as well as for the right to strike. A number of non-governmental organizations communicated information to the Special Rapporteur about incidents related to demonstrations, mainly during recent weeks.

135. The Special Rapporteur was informed that because of the deteriorating economic and social situation in the country, high unemployment or underemployment has led to frequent demonstrations. Groups of unemployed and underemployed workers around the country frequently used roadblocks (piquetes) as acts of protest. Hundreds of such incidents took place in recent months. Some of these roadblocks were spontaneous actions by groups protesting against lay-offs. While most roadblocks were resolved through negotiated settlements, a number ended in a confrontation between the gendarmeria and the strikers.

136. It was reported to the Special Rapporteur that 307 demonstrations took place in the first 301 days of 2000. Several days before the arrival of the Special Rapporteur, on 17 June, two demonstrators were killed as 300 gendarmes moved in to clear a roadblock. Serious incidents involving demonstrators and gendarmes took place in the town of General Mosconi and Tartagal.

137. The Special Rapporteur is deeply concerned about the way the gendarmeria, which is a militarized police force, sometimes dispersed demonstrators with rubber bullets and tear gas. According to information provided to the Special Rapporteur, several other protestors have been killed in the course of demonstrations since the President de la Rua took office in 1999.

138. In addition to the severe repression of demonstrations, it has been brought to the attention of the Special Rapporteur that more than 2,500 legal actions have been initiated by the authorities against demonstrators, in particular trade unionists.

139. According to NGOs, academics, journalists and trade unionists, the increase in demonstrations and roadblocks, which are without precedent, highlight the urgent need for a political dialogue in the country.

140. Finally, the Special Rapporteur would like to stress, that in view of the fact that the right to freedom of assembly is an intrinsic part of the right to freedom of expression, under no circumstance should excessive force be used.

C. The state of freedom of opinion and expression in the provinces: the case of Santiago del Estero

141. During preparations leading to his mission to Argentina, the Special Rapporteur expressed the wish to visit, in addition to the Federal Capital, Buenos Aires, one of the provinces. As it was not possible for him to visit all of them owing to time constraints, he

decided to visit the Province of Santiago del Estero. The choice was guided by the fact that prior to his visit, many of the reported violations of the right to freedom of opinion and expression allegedly occurred in that province. In addition, the OAS Special Rapporteur had issued a press release expressing his concern over the state of freedom of expression in Santiago del Estero, in particular of the newspaper El Liberal.[32]

142. The Special Rapporteur would like first of all to express his gratitude to the Federal Government of Argentina for having accepted his request to extend his mission for an additional day in order to visit Santiago del Estero. He would like also to sincerely thank provincial and municipal authorities in Santiago del Estero for their assistance during his mission, as well as all the individuals and organizations that he met.

143. The Special Rapporteur visited the Province of Santiago del Estero from 29 June to 1 July 2001 in order to assess the extent of enjoyment of the right to freedom of opinion and expression. He met with the Governor of the Province and his Cabinet, the President of the provincial legislature, the Deputy Mayor of the City of Santiago del Estero and the city government, the Bishop, the provincial judiciary, the Press Association (El Circulo de la Prensa), the Council of Lawyers, the publishers and editors of El Liberal and El Nuevo Diaro, the Director of the City Theatre and representatives of non-governmental organizations.

1. General context

144. The province of Santiago del Estero is one of the poorest of the country. It has a population of about 700,000. Unemployment is high. An estimated 33 per cent of the working population is employed in the public administration. The province has its own constitution, promulgated in 1997. Article 19 recognizes the right to freedom of opinion and expression. The Special Rapporteur was also informed that there is a Defensor del Pueblo and a provincial human rights commission.

2. Principal observations and concerns

145. With regard to the print media, there are three main newspapers in Santiago del Estero: El Liberal, El Nuevo Diaro and Abril. The first is family owned and was established in 1898. It is the oldest newspaper in the northern part of Argentina. The two others were founded in 1990 and 1999, respectively. Only El Liberal is registered with the Instituto Verificador de Circulaciones, the organ responsible for estimating the number of copies printed. El Liberal's circulation is estimated at 16,000 copies.

146. There is one AM radio station (LV 11), and several FM stations (FM Panorama, FM Exclusiva, FM Espiritu, etc.). There is only one open (no subscription) air television, Canal 7.

147. The Special Rapporteur noted that the situation in Santiago del Estero was tense. There was a sharp division between the followers of the Governor of the Province and his political opponents. While it is not the responsibility of the Special Rapporteur to interfere in provincial matters, he was distressed by the conflictual situation, mainly on political grounds, as well as the large number of allegations of violations of the right to freedom of opinion and expression.

With regard to the judiciary, it was brought to his attention that its independence and, in some instances, its slowness in responding was a concern. A climate of suspicion and sometimes fear was clearly perceptible in the province.

148. According to the information provided by El Circulo de la Prensa, during the last five years some 150 allegations of violations of the right to freedom of opinion and expression were reported in the province. These cases included threats and intimidation, as well as legal actions against journalists or media.

149. With regard to threats, the Special Rapporteur was informed that several journalists from newspapers outside Santiago del Estero (La Nación and La Voz del Interior) received death threats at their respective hotels when they were in Santiago del Estero to prepare articles on the situation in that province. Furthermore, several sources brought to the Special Rapporteur's attention that the phone lines of some alleged opponents or critics of the Governor had been tapped on several occasions. The issue was raised during the meeting with the Governor, who denied the allegations. He stated that the telephone company reportedly had examined the lines and found no evidence of wire-tapping.

150. Another issue of concern is the allocation of public notices (advertising) in the print media. The Special Rapporteur noted that despite the fact that El Liberal is the largest newspaper in the province, it has received no public notices since July 2000. The Special Rapporteur is of the view that public notices must be equally distributed without regard to the editorial policy. The Special Rapporteur is concerned that the present allocation of public notices appears to be a deliberate policy aimed at financially undermining a dissent voice, particularly in view of the fact that much of the employment in the province is in the public sector and openings are advertised in the newspapers. This could therefore encourage people to read some newspapers rather than others. In this connection, the Special Rapporteur would again like to refer to article 64 of Law 12,908 which says that companies receiving official advertising should comply with their social obligations towards their employees.

151. The Special Rapporteur is also deeply concerned at the legal action initiated against El Liberal. This case is widely known both nationally and internationally. In August 2000, 40 members of the Rama Feminina, a women's organization,[33] filed a criminal defamation complaint against El Liberal, alleging that the paper had damaged the reputation of the members of the organization by reprinting an article from La Voz del Interior, a newspaper published in the neighbouring Province of Córdoba, that referred to Rama Feminina supporters as "rameras", which means prostitutes in Spanish.

152. The Special Rapporteur was informed that the plaintiff's lawyer declared that he was representing 4,000 women who filed similar complaints in groups of 40, based on article 110[34] of the Penal Code. It was brought to the attention of the Special Rapporteur that La Voz del Interior has never been sued for publishing the original article. According to the information received, the total damages could amount to 20 million pesos (US$ 20 million). On 20 October 2000, a local court ordered El Liberal to post a bond of 384,000 pesos (US$ 384,000) pending the outcome of the various defamation suits.

153. The Special Rapporteur would like to emphasize that insult and the use of inappropriate words has to be strongly condemned. People of different views and ideas must always be respected in a democratic society. The Special Rapporteur concurs that the members of the Rama Feminina, as well as their families, have genuinely been offended. A compensation is therefore required. Regardless of the genuine prejudice, the Special Rapporteur strongly believes that the damages requested by the plaintiffs are too high and will definitely financially cripple the 101-year-old newspaper.

154. The Special Rapporteur noted with appreciation the quality of the newspaper and the high level of its reporting. The working conditions at and status of the newspaper appear to be far better than at the other two newspapers. The Special Rapporteur was also impressed by the fact that El Liberal pays attention to training and also has made significant investments in printing apparatus.

155. The El Liberal issue was addressed during the meeting between the Special Rapporteur and the Governor. The Governor clearly stated that he had no power to bring an end to the suit filed by the Rama Feminina. The Special Rapporteur underlined that in his capacity of the head of the executive branch of the province, he would have to try to explore all possible ways to assist in resolving the situation which has seriously harmed the climate in the province. The management of El Liberal and their lawyers have indicated their willingness to come to a friendly settlement with the assistance of a mediator. The Special Rapporteur is of the view that if a friendly agreement cannot be settled at the provincial level, the Federal Government, in light of its regional and international obligations, should assist in resolving this case which could have nationwide repercussions. The Special Rapporteur believes that a friendly settlement of the issue should be found. He considers that the closing down of El Liberal would be a great loss not only for the owner of the newspaper but also for Santiago del Estero and for the entire country. Indeed, a democracy is mature only if dissident and critical voices can also be heard, bearing in mind the obligation to be respectful of others.

156. The Special Rapporteur was also informed of a legal action for slander and insult against the Secretary-General of the Press Association, Eduardo Enrique Peláez. It has been reported that in November 2000, the mayor of the capital of Santiago del Estero, José Luis Zavalia,[35] filed a legal action for slander against Mr. Peláez because the Voces de la Gente, the organization's official publication, reported that the municipal press office had violated article 64 of Law 12.908 by granting advertising to media outlets that did not comply with their stipulated social obligations as employers. The Special Rapporteur was furthermore informed that members of the governmental press office also filed an action in response to the article's mention of "the radicals at the municipality". According to information received by the Special Rapporteur, a judge ordered Mr. Peláez's assets of 20,000 pesos (US$ 20,000), as well as those of the Press Association valued at 300,000 pesos, to be frozen. The Special Rapporteur is distressed by the fact that the action was directed at Mr. Peláez even though he did not write the article, nor was he in charge of publishing the paper.

157. A case of censorship was brought to the attention of the Special Rapporteur. According to the information received, a play by Pablo Neruda, El Cartero de Neruda (Neruda's Postman), was banned from showing at the municipal theatre in May 2000 because it contained scenes with naked actors. It has to be mentioned that this play has been shown before in several other cities of Argentina. The Special Rapporteur met with the director of the theatre who indicated that he,

not the Governor, decided not to show the play because it contained "obscene" scenes. He added that another municipal venue was available to stage the play. The Special Rapporteur was, however, informed by several sources that the place proposed by the authorities was not appropriate and that finally the university decided to stage the production.

158. Several cases of unequal access to public information were brought to the attention of the Special Rapporteur. In this regard, he would like to refer to the case of journalist Marcela Espindola, correspondent for the news agency DyN, who, wishing to interview a provincial government minister was informed on 3 March 2000 that "the Ministry does not receive women".

159. Finally the Special Rapporteur is concerned about the information that members of the Press Association and other organizations including the Madres del Dolor and the Asociation de Lucha contra la Droga have been threatened and harassed because they had denounced the failure by the police to investigate several recent cases of killing of teenagers, and when the judicial process was finally initiated it was extremely slow.

160. Despite the legal framework (provincial constitution) which guarantees freedom of opinion and expression, the Special Rapporteur is of the view that these rights are not fully realized in the province of Santiago del Estero. He also notes with great concern that the judiciary seems to be subject to interference from the executive. The Special Rapporteur has also noted that in some cases, favouring of the ruling authorities, the judiciary works faster than in other cases. In that connection, the Special Rapporteur would like to emphasize that timely rulings should be delivered for all persons and institutions, regardless of their political opinion and ideas.

161. To conclude, the Special Rapporteur notes that despite the fact that the provincial Defensor del Pueblo has been charged by the provincial legislature with collecting information on the media, little has been done. According to information received, in light of the highly political divisions in the province, neither the Defensor del Pueblo nor the provincial human rights commission has been able to carry out their respective duties. The Special Rapporteur is particularly concerned at the fact that since its establishment, the commission has reportedly never examined a complaint despite the large number brought before it.

IV. CONCLUDING OBSERVATIONS

162. The Special Rapporteur welcomes the expressed commitment of the Government of Argentina to democracy, the rule of law and human rights, in particular to promotion and protection of the right to freedom of opinion and expression.

163. The Special Rapporteur wishes to recall that freedom of opinion and expression constitutes the basis of all the freedoms on which democracy rests. No nation can make progress if freedom of expression is not guaranteed to all its citizens and protected by the law.

164. The Special Rapporteur notes with satisfaction that the legal environment in Argentina is in accordance with international and regional standards and that Argentina has given constitutional rank to international and regional human rights instruments. Along the same lines, the Special Rapporteur has been impressed by the existence of various bodies and mechanisms made available to the inhabitants of Argentina in order to better protect their fundamental rights.

165. The Special Rapporteur considers that Argentina has free and vibrant media, in both the press and broadcast sectors. The media market is flourishing with a large number of national and provincial newspapers and magazines, as well as private television and radio. The Special Rapporteur was equally impressed by the cultural life in Argentina, in particular with regard to music, theatre and literature.

166. The Special Rapporteur can assert that the right to freedom of opinion and expression is widely respected and realized in Argentina. There is no prior censorship and the media can operate in a free and independent environment. Thus, he notes with satisfaction that there is a plurality of viewpoints and voices.

167. The Special Rapporteur welcomes the recent decision by the Government to introduce in the Congress a bill aimed at eliminating criminal defamation in the case of public figures and introducing the actual malice and neutral reporting standards. He considers that if this bill is adopted it would give to Argentina one of the best legal frameworks for press freedom in all of Latin America. In this connection, the Special Rapporteur concurs fully with the assessment made by the OAS Special Rapporteur for Freedom of Expression who considers that "it [the bill] would constitute one of the most significant advances in the area of expression and democratic progress".[36]

168. The Special Rapporteur considers that the bill on access to information will enable Argentina to comply fully with its international and regional obligations. The Special Rapporteur notes that it is indispensable that journalists should have access to information held by public authorities, granted on an equitable and impartial basis, so they can carry out their role as a watchdog in a democratic society.

169. The Special Rapporteur believes that both bills were drafted in a participatory process and urges the Government to expedite the legislative procedure.

170. The Special Rapporteur is convinced that the media in Argentina play a crucial role in the political and social life of the country, and therefore, its role should not be restricted. Television in particular has an informative, but also an educational role to play.

171. The Special Rapporteur observes that the media in general enjoy high credibility in the eyes of the public. He notes with satisfaction that the overall majority of journalists are experienced and perform their work skilfully. He also notes the high quality of the investigative journalism.

172. While noting that the number of individual cases of violations of the right to freedom of opinion and expression has decreased over the past years and that there is no official policy to target them, the Special Rapporteur remains concerned at the number of attacks, incidents of harassment and threats against journalists and human rights defenders. He urges the authorities to investigate these cases and the judiciary to deal promptly with them.

173. The Special Rapporteur is concerned at the deteriorating economic and social situation in the country. He noted that the current crisis has had an impact on the exercise of the right to freedom of opinion and expression. He is disturbed in particular by the deterioration in the working conditions of journalists in recent years.

174. The Special Rapporteur has noted that the freedom of the media, which is widely realized in Argentina, is sometimes restricted by indirect methods or means, in particular the unequal allocation of publicity spots or advertising.

175. The Special Rapporteur wishes to recall that the rights to freedom of expression and assembly are core human rights and essential in a democracy. These rights have, however, to be exercised without prejudice to the rights and liberties of others. Law enforcement officers are under double duty to protect the rights of those assembled and to guarantee that other rights are not violated in the process.

176. The Special Rapporteur regrets that minorities continue to be discriminated against. He considers that more has to be done to integrate minorities into the media. He is convinced that additional efforts should be undertaken in order to integrate religious minorities into the media by listening more closely to their problems. It is the view of the Special Rapporteur that in a multicultural and multi-religious society, more attention should be drawn to the weak than to the strong.

177. The Special Rapporteur is deeply concerned at the state of the freedom of opinion and expression in the province of Santiago del Estero. He urges the provincial authorities to find a peaceful settlement to the current crisis situation in which the Governor has used his power to withhold advertising, and thereby cripple, the newspaper El Liberal which had published articles criticizing the members of the provincial government. This particular newspaper, which has a long history of fighting hegemonism has also become the target of abuse of executive power affecting its business. This particular case needs the immediate attention of the Government. Civil society should also react effectively to undo the harm done to this well-reputed newspaper. It is suggested that some sort of mediation between the owners of the newspaper and the Governor would perhaps be a way to find a solution to the present confrontation.

178. Finally, the Special Rapporteur considers that the Argentine experience in the field of freedom of opinion and expression could be of value for other Latin American countries and that it would be useful if Argentina could build up constructive cooperation with countries facing a process of profound economic and social transition.

V. RECOMMENDATIONS

179. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations to the Government for its consideration. In view of the open and constructive exchanges of views that took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

180. The Special Rapporteur strongly recommends that more talk shows and debates on rights issues be broadcast on national channels. During his meeting with the management of Canal 7 (the public multimedia holding company), the Special Rapporteur encouraged the involvement of more journalists and academics in the preparation of the content of this type of programme and to include themes such as gender inequality, children's rights and minority rights.

181. The Special Rapporteur invites the Government to keep him informed of further developments with respect to the bill on the right to access information and on the bill aimed at eliminating criminal defamation in the case of public figures. In that connection, the Special Rapporteur recalls the recommendations made in his report E/CN.4/2000/63 (para. 205) relating to the abuse of libel and defamation laws for press offences. The Special Rapporteur considers that in no event should fines be levied with the intention of limiting or eliminating opposing information and ideas.

182. The Special Rapporteur endorses the recommendations contained in the annual report for 2000 of the OAS Special Rapporteur for Freedom of Expression. He strongly supports in particular recommendations 6, which encourages States to "use the actual malice doctrine as the standard for defamation lawsuits against the press as well as the decriminalization of libel and slander laws", and 7, which "recommends that member States guarantee access to information and habeas data, both de jure and de facto, for all citizens, because both elements are essential for freedom of expression and the democratic system".

183. In that regard, the Special Rapporteur would like also to encourage the Government to take appropriate action in order that the law regulating habeas data may be approved by the Congress.

184. The Special Rapporteur strongly encourages the Government to consider ways to ensure that the process of introducing future legislation that may affect freedom of opinion and expression and media freedom is transparent and participatory.

185. The Special Rapporteur would urge the authorities to take the necessary steps to conduct in a timely, thorough and conclusive manner investigations into complaints of attacks, death threats and harassment against members of the media. He also urges that the investigations into the assassinations of the journalists Mario Bonino, Jose Luis Cabezas and Ricardo Gangene continue to their end. The Special Rapporteur recommends that the judiciary deal rapidly with the cases brought to its attention.

186. The Special Rapporteur strongly recommends to the managers of the main private media companies that, when a restructuring process has to be initiated for economic reasons, they engage in a constructive dialogue with the staff members concerned. The Special Rapporteur is in favour of the establishment, with the media companies, of committees tasked with managing funds aimed at providing training for the employees to be separated from the enterprise. The Special Rapporteur is of the view that such a mechanism may assist and help to avoid social pressure.

187. While the Special Rapporteur notes with appreciation the measures taken by Argentina to alleviate the prejudices of the majority of the population against some religious and ethnic minorities, the Special Rapporteur would encourage the Government and the NGO community to use the media to improve the image of ethnic and religious minorities in Argentina. In that connection, the Special Rapporteur recommends awareness-raising and educational measures to redress cultural stereotypes directed against some religious and ethnic minorities.

188. The Special Rapporteur is concerned about the situation in Santiago del Estero which is having a chilling effect on freedom of the press. The Special Rapporteur believes that a resolution of the current differences and an open dialogue with the opposition are essential steps in furthering the promotion and protection of human rights.

189. The Special Rapporteur endorses the recommendations made by the United Nations Human Rights Committee which examined the third periodic report of Argentina in October 2000. The Committee expressed concern over continuing attacks on human rights defenders, judges, complainants, representatives of human rights organizations and members of the media. In addition, persons who participate in peaceful demonstrations are reportedly subject to detention and penal action. The Committee recommended, inter alia, that "attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required" (CCPR/CO/70/ARG, para. 13).

190. Finally, the Special Rapporteur recommends that the technical cooperation programme initiated by the Office of the High Commissioner for Human Rights in Argentina continue and that a special focus be given to the promotion and protection of the right to freedom of opinion and expression, in particular in the provinces and for religious and ethnic minorities.

Notes

[1] General Videla was the Head of the junta from 1979 to 1981. Admiral Massera was the President of the first military junta.

[2] Judge Cavallo's ruling of 6 March 2001 was in response to a criminal complaint submitted in October 2000 by the Centre for Legal and Social Studies (CELS) concerning the disappearance of José Liborio Poblete Roa, his wife, Gertrudis Marta Hlaczik, and their daughter, Claudia Victoria, in 1978. Claudia Victoria Poblete has been found but the whereabouts of her parents remain unknown.

[3] Félix Luna, A Short History of the Argentinians, Planeta, Espejo de la Argentina, 2000, p. 208.

[4] The victims were Mario Bonino, Jose Luis Cabezas and Ricardo Gangene. Their cases are detailed in the chapter entitled "Principal characteristics of the violations against freedom of the press".

[5] In this regard, the Commission receives more petitions from Argentina than any other country: over 100 yearly.

[6] Under the amended 1994 Constitution, the President can be re-elected for a term of four years and there is no longer a legal requirement that the President be a Roman Catholic.

[7] "All the inhabitants of the Nation are entitled to the following rights, in accordance with the laws that regulate their exercise, namely: ... to publish their ideas through the press without censorship ...".

[8] In addition, the right to form federations is expressly provided for in the same Act (No. 23,551). An estimated 35 per cent of workers in Argentina belong to unions.

[9] It is estimated that 4 million Europeans arrived in Argentina during the nineteenth century, 70 per cent from Italy.

[10] Periodistas is the Argentine Association for the Defence of Independent Journalism. The NGO was formed in 1995 in "response to the threats to the press and independant journalism that jeopardized the freedom that had been attained since the restoration of the constitutional order in 1983". Its members are editors, columnists and writers. Its purpose is to "register and then follow up every hostile act, whether by the State or any other sector, that attempts to limit or impair the role that the press should play in building a mature and stable democratic system". It publishes each year a report on the state of freedom of the press in Argentina.

[11] See previous reports E/CN.4/1996/39, E/CN.4/1998/40 and E/CN.4/1999/64.

[12] On 15 November 1993, the body of Mario Bonino, a journalist and member of the Buenos Aires Press Workers Union, was found on the outskirts of Buenos Aires. Three years later, on 25 January 1997, the body of José Luis Cabezas, a photojournalist for the magazine Noticias, was found handcuffed and burned inside a car in Pinamar. On 13 May 1999, Ricardo Gangene, director of the weekly El Informador Chabutense, was killed in the city of Trelew, Chubut Province. It is believed that the three journalists were killed because of their investigative work into corrupt governmental practices.

[13] See E/CN.4/1999/64, paras. 49-51. No reply to this communication was sent to the Special Rapporteur by the Government.

[14] Mr. Gangene had published a series of articles about procurement irregularities at the Trelew Electrical Cooperative. The man accused of masterminding the crime, Osvaldo Daniel Viti, was expected to stand trial in March or April 2001, along with the assassin and an accomplice. Three other suspects, who had been detained in 1999, were freed in 2000.

[15] On 2 February 2000, the Dolores Criminal Tribunal, Buenos Aires Province, sentenced 8 of the 10 accused to life imprisonment. Three of the accused were members of the Buenos Aires police. The court also identified businessman Alfredo Yabrán as the instigator of the crime. The day after the sentencing, the provincial authorities announced the creation of an independent commission charged with investigating the "unclear aspects" that remained in the case, in particular, the role of the Buenos Aires police authorities.

[16] Before the incident, Mr. Etchecolatz was detained in connection with another case in which he is accused of child abduction and falsifying identities. Despite the existence of television footage which clearly shows the brothers Jorge and Marcelo Gristcelli to be Mr. Andrade's assailants, the Government has yet to act on the matter.

[17] Página 12 assigned Mr. Larrosa to cover the hostage crisis. The photographs that he took allegedly showed a policeman hiding material evidence, which later disappeared, in the trunk of a patrol car. In January, a police officer was detained and accused of concealing evidence and being an accessory to the robbery. And on 11 August, the investigating judge ordered another officer's arrest on the basis of Mr. Larrosa's photographs, according to local press reports.

[18] Mariano Mansilla is a lawyer and a founding member of the Comité de Acción Jurídica de Argentina - CAJ (Argentine Committee for Legal Action). He provides his services to the Central de Trabajadores Argentinos (Argentine Workers Union) and the Federación Mapuche de Argentina (Mapuche Federation of Argentina).

[19] See Report of the OAS Special Rapporteur for Freedom of Expression, 1999, Chap. III.

[20] In March 1997, President Menem won a US$ 150,000 judgement against the weekly magazine Noticias. The Court of Appeals ruled that the magazine and its editors, Jorge Fontevecchia and Héctor D'Amico, had violated the President's privacy when it published an article describing the flight of his illegitimate son and the boy's mother to Paraguay because of fears for their safety.

[21] In August 1997, a former civil servant won a US$ 50,000 judgement against Eduardo Aliverti, a radio journalist and reporter for Página 12, stemming from a story Mr. Aliverti broadcast in 1991.

[22] See OAS press release, Pren/8/99 of 16 April 1999.

[23] Periodistas claimed that the Argentine Supreme Court had violated both domestic and international law in three separate rulings on cases of alleged defamation.

[24] Principles 10: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanction in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

Principle 11: "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at the public officials, generally known as desacato laws, restrict freedom of expression and the right to information."

[25] In April 1997, for instance, Página 12 was ordered to publish a statement by a presidential aide who was angered that the paper reported that he had been recruiting Argentine mercenaries to fight in Croatia.

[26] See Report of the Office of the OAS Special Rapporteur for Freedom of Expression, 1999, page 24.

[27] In November 1998, the Autonomous Government of the City of Buenos Aires passed Law No. 104, recognizing every person's right to request information in the city government's possession.

[28] Estimates of the country's indigenous population range from 60,000 to 150,000. The largest groups are the Quechua of the north-west and the Mapuche of northern Patagonia. There are also important populations of Matacos, Tobas and others in the Chaco and in north-eastern cities such as Resistencia.

[29] The number of illegal migrants coming to Argentina has increased, according to information provided by NGOs. The majority of them are coming from neighbouring countries, in particular Peru and Bolivia. There are no official estimates of their numbers. The socio-economic conditions of the migrants are extremely precarious.

[30] The Special Rapporteur express concern at the numerous cases of torture, arbitrary arrest and detention of members of sexual minorities, who are targeted because of their sexual orientation. Concrete cases, including deaths, were brought to the attention of the Special Rapporteur.

[31] This is the case in the Province of Buenos Aires (art. 92 E of the Contravention Code), the Province of Santa Fe (art. 87) and the Province of Mendoza (art. 80). The codes of the two latter provinces provide respectively for 20 and 15 days' imprisonment.

[32] See Press Release Pren/30/00, "Special Rapporteur for Freedom of Expression condemns serious attacks and threats against two Argentine newspapers", 4 August 2000.

[33] Rama Feminina is affiliated with the Judicialist Party, the political party of the Governor. The organization is headed by his wife, who is also the Vice-Governor.

[34] Article 110 punishes with a fine of 1,000-100,000 pesos, or a prison term of one month to one year, anyone who "dishonours or discredits" anyone else.

[35] The mayor of the municipality of Santiago del Estero belongs to the Unión Cívica Radical, the political party of President de la Rua, while the Governor belongs to the Judicialist Party.

[36] See the Annual Report for 2000 of the OAS Special Rapporteur for Freedom of Expression.

Annex

LIST OF PERSONS THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

A. Buenos Aires

Funcionarios

Excmo. Sr. Fernando de la Rúa, Presidente de la República

Dr. Moline O'Connor, Vicepresidente de la Corte Suprema de Justicia

Dr. Adalberto Rodríguez Giavarini, Ministro de Relaciones Exteriores, Comercio Internacional y Culto

Dr. Jorge de la Rúa, Ministro de Justicia y Derechos Humanos

Dr. Nicolás Eduardo Becerra, Procurador General de la Nación

Embajador Leandro Despouy, Representante Especial para derechos humanos en el ámbito internacional

Embajador Albino Gómez y Dr. Daniel Larriqueta, Directorio del Sistema Nacional de Medios Públicos

Dr. Gustavo López, Interventor, Comité Federal de Radiodifusión (COMFER)

Diputado Alfredo Bravo, Presidente de la Comisión de Derechos Humanos de la Cámara de Diputados

Senador Raúl Romero Feris, Presidente de la Comisión de Libertad de Expresión de la Cámara de Senadores

Sr. Néstor Daniel Rostán, Presidente de la Comisión de Derechos y Garantías de la Cámara de Senadores

Diputado Jorge Oscar Folloni, Presidente de la Comisión de Libertad de Expresión de la Cámara de Diputados

Dr. Eduardo Mondino, Defensor del Pueblo de la Nación

Sr. Carlos Sersale di Cerisan, Ministro Plenipotenciario, Director General de Derechos Humanos

Sra. Alicia Oliveira, Defensora del Pueblo de la Ciudad de Buenos Aires

Dr. Roberto de Michele, Director de Planificación de Políticas de Transparencia, Oficina Anticorrupción, Ministerio de Justicia y Derechos Humanos

Naciones Unidas

Sr. Carmelo Angulo Barturen, Coordinador Residente de las Naciones Unidas, y personal del PNUD

Sra. Angélica Nauta Hunt, Directora del Centro de Información de las Naciones Unidas, y personal del CINU

Profesionales del sector de la información

Sr. Jorge Rouillon, Redactor/ Subdirector, Sección Cultura de La Nación

Sr. Ricardo Ancarola, Director de El Siglo

Sr. Roberto Pablo Guareschi, Secretario General de Redacción de Clarín

Sr. Saturnino Herroro Mitjans, Gerente de Asuntos Cooperativos, Grupo Clarín

Sr. Gabriel Giubellino, Redactor, Clarín;

Sr. Andrew Graham-Yooll, Buenos Aires Herald

Nik, Caricaturista, La Nación

Asociación de Entidades Periodísticas Argentinas (ADEPA)

Asociación de Periodistas

Asociación de Reporteros Gráficos Argentinos (ARGRA)

Federación Argentina de Trabajadores de la Prensa (FATPREN)

Asociación de Radios Comunitarias

Federación Internacional de Periodistas

Fundación José Luis Cabezas

Unión de los Trabajadores de la Prensa de Buenos Aires (UTPBA)

Académicos y escritores

Sr. Ernesto Sábato, escritor

Sr. Adolfo Pérez Esquivel, Premio Nobel de la Paz

Sr. Marco Aguinis, escritor

Sr. Félix Luna, historiador y periodista

Dra. Mónica Pinto, Secretaria Académica, Departamento de Derecho de la Universidad de Buenos Aires

Otras personalidades

Sra. Zelmira Mireya Emilse Regazzoli, Vicepresidenta, Comité para la Eliminación de la Discriminación contra la Mujer, de las Naciones Unidas

Sr. Gregorio Badeni, abogado

Sr. Damián Miguel Loreti, abogado

Grupos no gubernamentales (en orden alfabético)

Asociación de Lucha para la Identidad Transvestida y Transexual

Asociación Madres de la Plaza de Mayo

Asociación Madres de la Plaza de Mayo - Línea Fundadora

Central de Trabajadores Argentinos

Centro Islámico de la Républica Argentina

Centro de Estudios Legales y Sociales (CELS)

Comité de Acción Jurídica

Comunidad Judía de Argentina (AMIA)

Federación de Entidades Argentino Árabe de la Ciudad de Buenos Aires (FEARAB)

International Gay and Lesbian Human Rights Commission

Servicio Paz y Justicia

Transparencia Argentina

B. Santiago del Estero

Funcionarios

Dr. Carlos Arturo Juárez, Gobernador de Santiago del Estero, y miembros de su Gabinete

El Presidente de la Cámara de Diputados

El Presidente del Tribunal Superior de Justicia

El Adjunto del Intendente Municipal, y miembros del Departamento Ejecutivo

El Director del Teatro 25 de Mayo

Monseñor Juan Carlos Maccarone, Obispado de Santiago del Estero

Sr. Ricardo Aye, Vicepresidente de la Comisión de Educación

Sr. Daniel F. Yocca, Diputado

Profesionales del sector de la información

Sr. José Luis Castiglione, Director de El Liberal

Sr. José María Cantos, Presidente de Nuevo Diario

Sr. Eduardo Peláez, Secretario General, Sindicato de Periodistas

Grupos no gubernamentales

Asociación Madres del Dolor

Asociación Lucha contra la Droga